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WHEN: Tuesday, March 13, 2012
9 a.m.–12:30 p.m.

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

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FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–01]

12 CFR Chapter XII

Regulatory Review Plan

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of final regulatory review plan.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a notice of the final FHFA regulatory review plan for review of existing regulations under Executive Order 13579, "Regulation and Independent Regulatory Agencies," (July 11, 2011).

DATES: The effective date of this document is April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, *alfred.pollard@fhfa.gov,* telephone (202) 649–3050 (not a toll-free number), Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 13579

Executive Order 13579, "Regulation and Independent Regulatory Agencies," (July 11, 2011), requests that each independent regulatory agency, such as FHFA, analyze its existing regulations and modify, streamline, expand, or repeal them in accordance with the findings of the analysis. Executive Order 13579 also requests each independent regulatory agency to make public a plan under which the agency will periodically review its existing significant regulations to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

Establishment of FHFA; Transfer and Review of Regulations

The Housing and Economic Recovery Act of 2008 (HERA) established FHFA on July 30, 2008, as an independent regulatory agency to supervise and regulate the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (collectively, regulated entities), and the Office of Finance of the Federal Home Loan Bank System. HERA transferred to the new agency the employees, functions, and regulations of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the Government-Sponsored Enterprise mission team within the U.S. Department of Housing and Urban Development (HUD).

HERA and, most recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) mandate that FHFA issue new regulations on specific matters in connection with FHFA's supervision and regulation of the regulated entities and the Office of Finance. Currently, in determining whether to revise, adopt without change, or repeal transferred OFHEO, FHFB, and certain HUD regulations, FHFA reviews such regulations to determine the appropriate action and publishes the regulations for comment. Public comments provide additional information to FHFA on how to make the regulations more effective and less burdensome.

Regulatory Review Plan Under Executive Order 13579

FHFA's current review of OFHEO, FHFB, and certain HUD regulations is similar to the review it will conduct of existing regulations under Executive Order 13579. The regulatory review plan is set forth below. FHFA will conduct the review of its existing regulations under Executive Order 13579 at least every five years. In light of the recent establishment of FHFA and ongoing regulatory activities mandated by HERA and the Dodd-Frank Act, the first review will begin no later than August 2013, five years after the establishment of FHFA. FHFA regulations published in Chapter XII of Title 12 of the *Code of Federal Regulations* and are also posted on the FHFA Internet Web site at *http://www.fhfa.gov.*

II. Notice of Regulatory Review Plan

FHFA published a notice of its interim regulatory review plan and requested comments on the plan. 76 FR 59066 (September 23, 2011). FHFA received no comments. FHFA is adopting as final the interim regulatory review plan without change. The final regulatory review plan follows.

Plan for Review of Existing Regulations Under Executive Order 13579

a. *Scope and timing of regulatory reviews.* At least every five years, FHFA will conduct a review of the regulations it has issued and that are in effect. The first regulatory review will begin no later than August 2013.

b. *Factors considered in the regulatory reviews.* The regulatory reviews will take into consideration the following factors, as applicable:

(1) Legal or regulatory developments, including new laws, executive orders, or judicial decisions that have been adopted since the promulgation of a regulation that make such regulation inefficient, obsolete, contrary to controlling legal precedent, or unduly burdensome;

(2) Application by Fannie Mae, Freddie Mac, or a Federal Home Loan Bank (regulated entity) or the Office of Finance of the Federal Home Loan Bank System for revision of a regulation because of reasonably discernible regulatory burden or inefficiency;

(3) Marketplace developments, technological evolution and related changes that may have rendered an existing regulation, in whole or in part, inefficient, outmoded, or outdated;

(4) Such other occurrences or developments as determined by FHFA to be relevant to a review for inefficiency or unwarranted regulatory burden;

(5) Whether the provisions of the regulation are written in plain language or otherwise need clarification;

(6) Compelling evidence that a consolidation of two or more regulations, elimination of a duplicative regulation, or other revision to regulatory requirements would facilitate compliance by or supervision of a regulated entity or the Office of Finance;

(7) A demonstration of a better alternative method to effect a regulatory

purpose or requirement supported by compelling evidence of significantly less intrusive means or of a substantially more efficient method of accomplishing the same supervisory purpose; and

(8) Such other factors as determined by FHFA to be relevant to determining and evaluating the need for and effectiveness of a particular regulation.

c. *Regulatory review process.*—(1) The regulatory reviews will be conducted by the FHFA Office of General Counsel, under the direction of the General Counsel, and will include internal consultation with other FHFA offices and staff, guidance provided by the FHFA Director, as well as consideration of public comments.

(2) A review and report of findings and recommendations will be provided to the FHFA Director on a timely basis. The report of findings and recommendations will be privileged and confidential.

(3) After receiving the report of findings and recommendations, the FHFA Director will determine what steps may be necessary to relieve any unnecessary burden, including amendment to or repeal of existing regulations or issuance of less formal guidance.

d. *No right of action.* The regulatory reviews are not formal or informal rulemaking proceedings under the Administrative Procedure Act and create no right of action against FHFA. Moreover, the determination of FHFA to conduct or not to conduct a review of a regulation and any determination, finding, or recommendation resulting from any review are not final agency actions and, as such, are not subject to judicial review.

Dated: February 15, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–4056 Filed 2–21–12: 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0956; Directorate Identifier 2010–NM–018–AD; Amendment 39–16951; AD 74–08–09 R3]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for transport category airplanes that have one or more lavatories equipped with paper or linen waste receptacles. That AD currently requires installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. This new AD extends the time an airplane may be operated with certain missing ashtrays. This AD was prompted by the determination that certain compliance times required by the existing AD could be extended and still address fires occurring in lavatories caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. We are issuing this AD to correct this unsafe condition on these products.

DATES: This AD is effective March 28, 2012.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Aerospace Engineer, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–227–2195; fax: 425–227–1232.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996). That AD applies to the specified products. The NPRM published in the **Federal Register** on October 6, 2010 (75 FR 61657). That NPRM proposed to continue to require installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. That NPRM also proposed to extend the time an airplane may be operated with certain missing ashtrays.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (75 FR 61657, October 6, 2010) proposal and the FAA's response to each comment.

Support for the NPRM

Air Line Pilots Association, International (ALPA), Boeing, and Air Transport Association (ATA) supported the intent of the NPRM (75 FR 61657, October 6, 2010).

Request to Credit MPD Task Cards

MNG Airlines reported that some airplane manufacturers' maintenance planning documents (MPDs) include the requirements of AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996), in a task card, which the operators add to their own MPDs for their fleet. The commenter requested that we revise the NPRM (75 FR 61657, October 6, 2010) by indicating that, if a manufacturer's and operator's MPDs cover a task card, the AD requirements are automatically satisfied.

We disagree with the request. Operators determine how to track the implementation and compliance of the AD requirements for their fleet. We do not consider it appropriate to include AD provisions that apply only to certain operators. It is not necessary to change the final rule to include this provision.

Request To Clarify Relief Provisions

ATA recommended that we simplify and clarify the proposed relief provisions for airplanes having multiple lavatory doors. For those airplanes, ATA recommended that we revise the NPRM (75 FR 61657, October 6, 2010) to provide MMEL (Master Minimum Equipment List) relief for up to—and including—50 percent of the ashtrays for 10 days. (The NPRM specified only "up to" 50 percent of the ashtrays.) ATA noted that this recommendation would (1) Remove the proposed requirement to replace half of the missing ashtrays within 3 days; (2) provide a level of safety equal to or exceeding the level proposed for airplanes having only one

lavatory door; (3) simplify the management and oversight of MMEL relief by operators and FAA inspectors; and (4) clarify that the phrase "up to" includes 50 percent, which would eliminate differing interpretations.

We have reviewed the ATA proposal. While we agree that the proposal has merit, we find that it does not account for all possible scenarios. Paragraph (j) of the AD allows 3 days to install any ashtrays if more than 50 percent of the ashtrays are missing. The commenter's proposed change, on the other hand, could ground airplanes: If, for example, 2 of 2 ashtrays are missing, 1 ash tray must be installed before further flight. We have therefore not changed the final rule regarding this issue. But, according to the provisions of paragraph (m) of this AD, we may approve requests to adjust the compliance schedule if the request includes data substantiating that the new schedule would provide an acceptable level of safety.

Request To Revise Compliance Time

Thomas Edward Young requested that we clarify paragraph (j) of the NPRM (75 FR 61657, October 6, 2010) to address the case of a single ashtray missing on an airplane with multiple lavatory door ashtrays. Mr. Young provided alternative text to address this situation.

We disagree with the request. Paragraph (j) of this AD adequately covers the scenario described by the commenter. We have not changed the final rule regarding this issue.

Request To Clarify Proposed Changes

ALPA requested clarification of the relief proposed in the NPRM (75 FR 61657, October 6, 2010) for two possible scenarios.

First, ALPA was concerned about possible confusion of the AD requirements for airplanes with an odd number of multiple lavatory doors with missing or inoperative ashtrays. In this case, the 50 percent criteria specified in the AD would result in a fractional number. ALPA therefore suggested that we revise the NPRM (75 FR 61657, October 6, 2010) to ensure that a fractional number of ashtrays be rounded to the next higher whole number.

Second, ALPA noted that, if there are groups of lavatories in multiple locations throughout an airplane, compliance with the proposed requirements aircraft-wide could result in all of the ashtrays in a group being missing or inoperative. To ensure that the required extinguishing capability is retained, ALPA therefore recommended an additional requirement to ensure that at least one lavatory door in each group of lavatories has a serviceable ashtray.

We disagree with the requests, although we considered both recommendations during the drafting of this revision of the AD. We determined that the commenter's first recommendation (to address airplanes with an odd number of missing ashtrays) would have only added to the complexity of the AD. If the calculation of ashtrays needing to be replaced results in a fractional number, operators will need to round up this figure. The only way to replace 2.5 ashtrays, for example, is to replace 3 ashtrays. We find that additional clarification is not necessary.

We determined that the commenter's second recommendation (to address airplanes with all ashtrays missing in a group of lavatories) would have resulted in confusing and overly complicated requirements. The AD's more simplified approach adequately addresses the unsafe condition.

We have not changed the AD regarding these issues.

Conclusion

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

Costs of Compliance

This action merely extends a certain compliance time and does not add any new additional economic burden on affected operators. The relief provided by this AD allows operators to continue to operate airplanes without the required number of ashtrays for a longer period of time than was previously permitted. This results in reduced costs to affected operators since it reduces the potential interruptions in service to reinstall the ashtrays. The current costs associated with this AD are provided below for the convenience of affected operators. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane
Placard installations	1	$85	Negligible	$85.
Inspections	2	85	0	$170 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996), and adding the following new AD:

74–08–09 R3 Transport category airplanes: Amendment 39–16951; Docket No. FAA–2010–0956; Directorate Identifier 2010–NM–018–AD.

(a) Effective Date

This airworthiness directive (AD) is effective March 28, 2012.

(b) Affected ADs

This AD revises AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996).

(c) Applicability

This AD applies to transport category airplanes, certificated in any category, that have one or more lavatories equipped with paper or linen waste receptacles. These lavatories may be on various airplanes, identified in but not limited to the airplanes of the manufacturers included in table 1 of this AD.

TABLE 1—AFFECTED AIRPLANES

Airplane manufacturer
328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH).
AEROSPATIALE (Societe Nationale Industrielle Aerospatiale).
Airbus.
ATR—GIE Avions de Transport Régional.
BAE Systems (Operations) Limited.
The Boeing Company.
Bombardier, Inc.
British Aerospace Regional Aircraft.
Cessna Aircraft Company.
DASSAULT AVIATION.
EADS CASA (Type Certificate previously held by Construcciones Aeronauticas, S.A.).
Empresa Brasileira de Aeronautica S.A. (EMBRAER).
Fokker Services B.V.
Gulfstream Aerospace Corporation.
Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.).
Hamburger Flugzeugbau GmbH.
Hawker Beechcraft Corporation (Type Certificate previously held by Raytheon Aircraft Company; Beech Aircraft Corporation).
Israel Aircraft Industries, Ltd.
Learjet Inc.
Lockheed Aircraft Corporation.
Lockheed Martin Corporation/Lockheed Martin Aeronautics Company.
Maryland Air Industries, Inc.
McDonnell Douglas Corporation.
Mitsubishi Heavy Industries, Ltd.
Saab AB, Saab Aerosystems.
Sabreliner Corporation.
Short Brothers PLC.
Vickers-Armstrongs (Aircraft Limited).
Viking Air Limited (Type Certificate previously held by Bombardier, Inc.)

(d) Subject

Air Transport Association (ATA) of America Code 25: Equipment/furnishings.

(e) Unsafe Condition

This revision to the AD (AD 74–08–09 R2 (61 FR 32318, June 24, 1996)) was prompted by the determination that certain compliance times required by the existing AD may be extended and still address fires occurring in lavatories caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. This revision to the AD would continue to prevent possible fires that could result from smoking materials being dropped into lavatory paper or linen waste receptacles.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Restatement of Requirements of AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996): Placard Installation

Within 60 days after August 6, 1974 (the effective date of AD 74–08–09, Amendment 39–1917 (39 FR 28229, August 6, 1974)), or before the accumulation of any time in service on a new production aircraft after delivery, whichever occurs later—except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished: Accomplish the requirements of paragraphs (g)(1) and (g)(2) of this AD.

(1) Install a placard on each side of each lavatory door over the door knob, or on each side of each lavatory door, or adjacent to each side of each lavatory door. The placards must contain the legible words "No Smoking in Lavatory" or "No Smoking," or contain "No Smoking" symbology in lieu of words, or contain both wording and symbology, to indicate that smoking is prohibited in the lavatory. The placards must be of sufficient size and contrast and be located so as to be conspicuous to lavatory users. And

(2) Install a placard on or near each lavatory paper or linen waste disposal receptacle door, containing the legible words or symbology indicating "No Cigarette Disposal."

(h) Restatement of Requirements of AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996): Announcement Procedures

Within 30 days after August 6, 1974 (the effective date of AD 74–08–09, Amendment 39–1917 (39 FR 28229, August 6, 1974)), establish a procedure that requires that, no later than a time immediately after the "No Smoking" sign is extinguished following takeoff, an announcement be made by a crewmember to inform all aircraft occupants that smoking is prohibited in the aircraft lavatories; except that, if the aircraft is not equipped with a "No Smoking" sign, the required procedure must provide that the announcement be made prior to each takeoff.

(i) Restatement of Requirements of AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996): Ashtray Installation

Except as provided by paragraph (j) of this AD: Within 180 days after August 6, 1974 (the effective date of AD 74–08–09, Amendment 39–1917 (39 FR 28229, August 6, 1974)), or before the accumulation of any time in service on a new production aircraft, whichever occurs later—except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished: Install a self-contained, removable ashtray on or near the entry side of each lavatory door. One ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory door served.

(j) Restatement of Requirements of AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996), with Revised Compliance Times: Allowances for Partial Replacement

An airplane with multiple lavatory doors may be operated with up to 50 percent of the lavatory door ashtrays missing or inoperative, provided 50 percent of the missing or inoperative ashtrays are replaced within 3 days and all remaining missing or inoperative ashtrays are replaced within 10 days. An airplane with only 1 lavatory door may be operated for a period of 10 days with the lavatory door ashtray missing or inoperative.

Note 1 to paragraph (j) of this AD: This AD permits a lavatory door ashtray to be missing, although the FAA-approved Master Minimum Equipment List (MMEL) may not allow such provision. In any case, the provisions of this AD prevail.

(k) Restatement of Requirements of AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996): Inspections

Within 30 days after August 6, 1974 (the effective date of AD 74–08–09, Amendment

39–1917 (39 FR 28229, August 6, 1974)), and thereafter at intervals not to exceed 1,000 hours' time-in-service from the last inspections, accomplish the following:

(1) Inspect all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation, fit, sealing, and latching for the containment of possible trash fires.

(2) Correct all defects found during the inspections required by paragraph (k)(1) of this AD.

(l) Restatement of Requirements of AD 74–08–09 R2, Amendment 39–9680 (61 FR 32318, June 24, 1996): Adjustments to Inspection Intervals

Upon the request of an operator, the FAA Principal Maintenance Inspector (PMI) may adjust the 1,000-hour repetitive inspection interval specified in paragraph (k) of this AD to permit compliance at an established inspection period of the operator if the request contains data to justify the requested change in the inspection interval.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Airframe/Cabin Safety Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(n) Related Information

For more information about this AD, contact Alan Sinclair, Aerospace Engineer, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–227–2195; fax: 425–227–1232; email: *alan.sinclair@faa.gov*.

(o) Material Incorporated by Reference

None.

Issued in Renton, Washington, on January 27, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–3973 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0755; Directorate Identifier 2010–NE–12–AD; Amendment 39–16956; AD 2012–04–01]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all RR RB211–Trent 800 series turbofan engines. That AD currently requires removal from service of certain critical engine parts based on reduced life limits. This new AD reduces the life limits of additional critical engine parts. This AD was prompted by RR reducing the life limits of additional critical engine parts. We are issuing this AD to prevent the failure of critical rotating parts, which could result in uncontained failure of the engine and damage to the airplane.

DATES: This AD is effective March 28, 2012.

ADDRESSES: For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418 or email from *http://www.rolls-royce.com/contact/civil_team.jsp*, or download the publication from *https://www.aeromanager.com*. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2003–16–18, amendment 39–13271 (68 FR 49344, August 18, 2003). That AD applies to the specified products. That SNPRM published in the **Federal Register** on November 7, 2011 (76 FR 68663). The original NPRM (75 FR 45560, August 3, 2010) proposed to revise the Trent 800 Time limits Manual (TLM) of the Trent 800 engine maintenance manuals (EMMs). The SNPRM proposed to prohibit installation of one certain critical part and to increase the life of another critical part whose lives were previously reduced by that existing AD.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM (76 FR 68663, November 7, 2011).

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 16 RB211–Trent 800 series turbofan engines of U.S. registry. The average labor rate is $85 per work-hour, but no labor cost is associated with this AD because discs are replaced at scheduled maintenance intervals. Prorated cost of parts cost about $45,000 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $720,000.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701:

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2003–16–18, Amendment 39–13271 (68 FR 49344, August 18, 2003) and adding the following new AD:

2012–04–01 Rolls-Royce plc: Amendment 39–16956; Docket No. FAA–2010–0755; Directorate Identifier 2010–NE–12–AD.

(a) Effective Date

This AD is effective March 28, 2012.

(b) Affected ADs

This AD supersedes AD 2003–16–18, Amendment 39–13271 (68 FR 49344, August 18, 2003).

(c) Applicability

This AD applies to Rolls-Royce plc (RR) RB211–Trent 895–17, 892–17, 892B–17, 884–17, 884B–17, 877–17, and 875–17 turbofan engines.

(d) Unsafe Condition

This AD was prompted by RR reporting changes to the lives of certain life-limited rotating parts. We are issuing this AD to prevent the failure of critical rotating parts, which could result in uncontained failure of the engine and damage to the airplane.

(e) Actions and Compliance

Compliance is required within 30 days after the effective date of this AD, unless already done.

(1) After the effective date of this AD, remove from service the parts listed in Table 1 of this AD before exceeding the new life limit indicated:

TABLE 1—REDUCED PART LIVES

Part nomenclature	Part No. (P/N)	Life in standard duty cycles	Life in cycles using the HEAVY profile
(i) Intermediate-pressure (IP) Compressor Rotor Shaft	FK24100	8,140	8,140
(ii) IP Compressor Rotor Shaft	FK24496	8,860	8,180
(iii) High-pressure (HP) Compressor Stage 1 to 4 Rotor Discs Shaft	FK24009	4,560	4,460
(iv) HP Compressor Stage 1 to 4 Rotor Discs Shaft	FK26167	6,340	6,000
(v) HP Compressor Stage 1 to 4 Rotor Discs Shaft	FK32580	8,550	6,850
(vi) HP Compressor Stage 1 to 4 Rotor Discs Shaft	FW11590	8,550	6,850
(vii) HP Compressor Stage 1 to 4 Rotor Discs Shaft	FW61622	8,550	6,850
(viii) HP Compressor Stage 5 and 6 Discs and Cone	FK25230	5,000	5,000
(ix) HP Compressor Stage 5 and 6 Discs and Cone	FK27899	5,000	5,000
(x) IP Turbine Rotor Disc	FK21117	11,610	10,400
(xi) IP Turbine Rotor Disc	FK33083	0	0

(f) Installation Prohibition

After the effective date of this AD, do not install any IP turbine rotor discs, P/N FK33083, into any engine.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) You may find additional information on calculating Standard Duty Cycles and/or using HEAVY Profile Cycles, in RR Time Limits Manual 05–00–01–800–801, Recording and Control of the Lives of Parts.

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

(3) Refer to European Aviation Safety Agency Airworthiness Directive 2007–0003R1, dated January 15, 2009, and RR Alert Service Bulletin No. RB.211–72–AE935, Revision 7, dated January 19, 2009, for related information.

(4) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email from *http://www.rolls-royce.com/contact/civil_team.jsp;* or Web: *https://www.aeromanager.com.*

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on February 10, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–3863 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730 and 744

[Docket No. 120124063–0261–01]

RIN 0694–AF55

Updated Statements of Legal Authority To Reflect Continuation of Emergency Declared in Executive Orders 12947 and 13224

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule updates the Code of Federal Regulations (CFR) legal authority citations for the Export Administration Regulations (EAR) to replace citations to the President's Notice of January 13, 2011, *Continuation of the National Emergency with Respect to Terrorists Who Threaten to Disrupt the Middle East Peace Process,* with citations to the President's Notice of January 12, 2012, and add citations to the President's Notice of September 21, 2011, *Continuation of the National Emergency With Respect to Persons Who Commit, Threaten to Commit, or Support Terrorism.* These notices are the most recent such annual Presidential notices on those subjects. BIS is making these changes to keep the CFR's legal authority citations for the EAR current.

DATES: *Effective Date:* February 22, 2012.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Bureau of Industry and Security, telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Addition of Citation to the Notice of January 19, 2012

In Executive Order 12947 of January 13, 1995 (60 FR 5079, 3 CFR, 1995 Comp., p. 356), the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy and economy of the United States posed by grave acts of violence committed by terrorists who threaten to disrupt the Middle East process. On August 20, 1998, by Executive Order 13099 (63 FR 45167, 3 CFR, 1998 Comp., p. 208), the President modified the Annex to Executive Order 12947 to identify four additional persons who threaten to disrupt the Middle East peace process. On February 16, 2005, by Executive Order 13372, the President clarified the steps taken in Executive Order 12947. The national emergency declared in Executive Order 12947 has been continued in effect through successive annual presidential notices.

The authority for Parts 730 and 744 of the EAR (15 CFR parts 730 and 744) rests in part on Executive Order 12947, as amended and clarified, and on the successive annual notices continuing the emergency declared in that Executive Order. This rule revises the authority citation paragraphs in those parts of the CFR to add a citation to the notice of January 19, 2012, which is the most recent such annual Presidential notice, and to remove the citation to the notice of January 13, 2011 on the same topic.

Addition of Citation to the Notice of September 21, 2011

On September 23, 2001, by Executive Order 13224, the President declared a national emergency with respect to persons who commit, threaten to commit, or support terrorism, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). The President took this action to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks on September 11, 2001.

The authority for Parts 730 and 744 of the EAR (15 CFR parts 730 and 744) rests in part on Executive Order 13224 and on the successive annual notices continuing the emergency declared in that Executive Order. This rule revises the authority citation paragraphs in those parts of the CFR to cite the notice of September 21, 2011, which is the most recent such annual Presidential notice.

BIS is making the two revisions described in this rule so that Title 15 of the Code of Federal Regulations will cite the current authorities for the parts mentioned above. This rule is purely procedural and makes no changes other than to revise CFR authority citations paragraphs. It does not change the text of any section of the EAR, nor does it alter any right, obligation or prohibition that applies to any person under the EAR.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been determined not to be a significant rule for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

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

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations and is nondiscretionary. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, the EAR (15 CFR parts 730–774) is amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows;

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179, E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of September 21, 2011, 76 FR 59001 (September, 22, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012).

PART 744—[AMENDED]

■ 2. The authority citation for 15 CFR part 744 is revised to read as follows:

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

Dated: February 14, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–4062 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Acceptance of ASTM F963–11 as a Mandatory Consumer Product Safety Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Acceptance of standard.

SUMMARY: The Consumer Product Safety Commission ("CPSC," Commission," or "we") is announcing that we have accepted the revised ASTM F963–11 standard titled, *Standard Consumer Safety Specifications for Toy Safety.* Pursuant to section 106 of the Consumer Product Safety Improvement Act of 2008, ASTM F963–11 will become a mandatory consumer product safety standard effective June 12, 2012.

DATES: ASTM F963–11 will become effective on June 12, 2012.

FOR FURTHER INFORMATION CONTACT: Jonathan Midgett, Ph.D., Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Suite 600, Bethesda, MD 20814; telephone (301) 504–7692; email *jmidgett@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

On February 10, 2009, section 106(a) of the Consumer Product Safety Improvement Act of 2008, (CPSIA), Public Law 110–314, made the provisions of ASTM F963–07, *Standard Consumer Safety Specifications for Toy Safety* (except for section 4.2 and Annex 4 or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute) mandatory consumer product safety standards under section 9 of the Consumer Product Safety Act (CPSA). On May 13, 2009, the Commission accepted ASTM International (formerly the American Society for Testing and Materials) (ASTM) proposed revisions to the standard, by accepting ASTM F963–08 (except for the removal of section 4.27 of ASTM F963–07, which covers toy chests). The requirements of ASTM F963–08 became effective on August 16, 2009, except for section 4.27 (toy chests) of ASTM F963–07, which was already in effect.

On December 15, 2011, ASTM officially proposed revisions to the existing standard for Commission consideration, by submitting ASTM F963–11, *Standard Consumer Safety Specifications for Toy Safety.* ASTM proposes replacing ASTM F963–08 with the revised ASTM F963–11 version. Section 106(g) of the CPSIA provides that, upon ASTM notifying the Commission of proposed revisions to ASTM F963, the Commission must incorporate the revisions into the consumer product safety rule, unless within 90 days of receiving the notice, the Commission notifies ASTM that it has determined that the proposed revisions do not improve the safety of the consumer product(s) covered by the standard. If the Commission so notifies ASTM regarding a proposed revision of the standard, the existing standard remains in effect, regardless of the proposed revision. If the Commission does not object to the proposed revisions, the revised standard becomes effective 180 days after the date that ASTM notifies the Commission of the revision.

The Commission has determined that the proposed revisions in ASTM F963–11 improve the safety of the consumer products covered by the standard. Therefore, although the CPSIA does not require us to issue a notice in the **Federal Register** announcing our decision, we are, through this notice, announcing that the CPSC accepts the revisions as mandatory consumer product safety standards. ASTM F963–11 will become effective as a mandatory consumer product safety standard on June 12, 2012. However, because ASTM F963–11 does not reincorporate section 4.27 (toy chests) of ASTM F963–07, that provision from ASTM F963–07 regarding toy chests remains in effect.

Dated: February 15, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–3990 Filed 2–21–12; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3372; File No. S7–17–11]

RIN 3235–AK71

Investment Adviser Performance Compensation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is adopting amendments to the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge performance based compensation to "qualified clients." The amendments

revise the dollar amount thresholds of the rule's tests that are used to determine whether an individual or company is a qualified client. These rule amendments codify revisions that the Commission recently issued by order that adjust the dollar amount thresholds to account for the effects of inflation. In addition, the rule amendments: provide that the Commission will issue an order every five years in the future adjusting the dollar amount thresholds for inflation; exclude the value of a person's primary residence and certain associated debt from the test of whether a person has sufficient net worth to be considered a qualified client; and add certain transition provisions to the rule.

DATES: *Effective Date:* The amendments are effective on May 22, 2012.

FOR FURTHER INFORMATION CONTACT: Daniel K. Chang, Senior Counsel, or C. Hunter Jones, Assistant Director, at 202–551–6792, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 205–3 [17 CFR 275.205–3] under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").[1]

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I. Introduction

Section 205(a)(1) of the Investment Advisers Act generally restricts an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client.[2] Congress restricted these compensation arrangements (also known as performance compensation or performance fees) in 1940 to protect advisory clients from arrangements it believed might encourage advisers to take undue risks with client funds to increase advisory fees.[3] Congress subsequently authorized the Commission to exempt any advisory contract from the performance fee restrictions if the contract is with persons that the Commission determines do not need the protections of those restrictions.[4]

The Commission adopted rule 205–3 in 1985 to exempt an investment adviser from the restrictions against charging a client performance fees in certain circumstances.[5] The rule, when adopted, allowed an adviser to charge performance fees if the client had at least $500,000 under management with the adviser immediately after entering into the advisory contract ("assets-under-management test") or if the adviser reasonably believed the client had a net worth of more than $1 million at the time the contract was entered into ("net worth test"). The Commission stated that these standards would limit the availability of the exemption to clients who are financially experienced and able to bear the risks of performance fee arrangements.[6]

In 1998, the Commission amended rule 205–3 to, among other things, change the dollar amounts of the assets-under-management test and net worth test to adjust for the effects of inflation since 1985.[7] The Commission revised the former from $500,000 to $750,000, and the latter from $1 million to $1.5 million.[8]

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[9] amended section 205(e) of the Advisers Act to require that the Commission adjust for inflation the dollar amount thresholds in rules under the section, rounded to the nearest $100,000.[10] Separately, the Dodd-Frank Act also required that we adjust the net worth standard for an "accredited investor" in rules under the Securities Act of 1933 ("Securities Act"),[11] such as Regulation D,[12] to exclude the value of a person's primary residence.[13]

In May 2011, the Commission published a notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management and the net worth tests of rule 205–3 to account for the effects of inflation.[14] Our release ("Proposing Release") also proposed to amend the rule itself to reflect any inflation adjustments to the dollar amount thresholds that we might issue by order.[15] In addition, our proposed amendments (i) stated that the Commission would issue an order every five years adjusting for inflation the dollar amount thresholds, (ii) excluded the value of a person's primary residence from the test of whether a person has sufficient net worth to be considered a "qualified client," and (iii) modified certain transition provisions of the rule.

On July 12, 2011, we issued an order revising the threshold of the assets-under-management test to $1 million,

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[1] 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to the Investment Advisers Act, and all references to rules under the Advisers Act, including rule 205–3, are to Title 17, Part 275 of the Code of Federal Regulations [17 CFR part 275].

[2] 15 U.S.C. 80b–5(a)(1).

[3] H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940). Performance fees were characterized as "heads I win, tails you lose" arrangements in which the adviser had everything to gain if successful and little, if anything, to lose if not. S. Rep No. 1775, 76th Cong., 3d Sess. 22 (1940).

[4] Section 205(3) of the Advisers Act. Section 205(e) of the Advisers Act authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition advisory contracts with persons that the Commission determines do not need its protections. Section 205(e) provides that the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as "financial sophistication, net worth, knowledge of an experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205]."

[5] Exemption To Allow Registered Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 996 (Nov. 14, 1985) [50 FR 48556 (Nov. 26, 1985)] ("1985 Adopting Release"). The exemption applies to the entrance into, performance, renewal, and extension of advisory contracts. See rule 205–3(a).

[6] See 1985 Adopting Release, *supra* note 5. at Sections I.C and II.B. The rule also imposed other conditions, including specific disclosure requirements and restrictions on calculation of performance fees. *See id.* at Sections II.C–E.

[7] *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)] ("1998 Adopting Release").

[8] See *id.* at Section II.B.1.

[9] Public Law 111–203, 124 Stat. 1376 (2010).

[10] See section 418 of the Dodd-Frank Act (requiring the Commission to issue an order every five years revising dollar amount thresholds in a rule that exempts a person or transaction from section 205(a)(1) of the Advisers Act if the dollar amount threshold was a factor in the Commission's determination that the persons do not need the protections of that section).

[11] 15 U.S.C. 77a–77z–3.

[12] See 17 CFR 230.501–.508.

[13] See section 413(a) of the Dodd-Frank Act.

[14] *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3198 (May 10, 2011) [76 FR 27959 (May 13, 2011)] ("Proposing Release"). Rule 205–3 is the only exemptive rule issued under section 205(e) of the Advisers Act that includes dollar amount tests, which are the assets-under-management and net worth tests. *See supra* text accompanying note 10.

[15] *Id.*

and of the net worth test to $2 million.[16] We received approximately 50 comments on our proposed rule amendments.[17] Today we are adopting amendments to rule 205–3 largely as we proposed them, with modifications to address issues raised by commenters, as discussed further below.

II. Discussion

A. Inflation Adjustment of Dollar Amount Thresholds

We are amending rule 205–3 in three ways to carry out the required inflation adjustment of the dollar amount thresholds of the rule. First, we are revising the dollar amount thresholds that currently apply to investment advisers, to codify the order we issued on July 12, 2011. As amended, paragraph (d) of rule 205–3 provides that the assets-under-management threshold is $1 million and that the net worth threshold is $2 million, which are the revised amounts we issued by order.[18] Although some commenters objected to raising these dollar amount thresholds,[19] section 205(e) of the Advisers Act requires that we adjust the amounts for inflation.[20]

Second, we are adding to rule 205–3, as proposed, a new paragraph (e) that states that the Commission will issue an order every five years adjusting for inflation the dollar amount thresholds of the assets-under-management and net worth tests of the rule.[21] These periodic adjustments are required by the Advisers Act,[22] and most commenters supported this amendment to the rule.[23]

Amended rule 205–3(e) also specifies the price index on which future inflation adjustments will be based.[24] The index is the Personal Consumption Expenditures Chain-Type Price Index ("PCE Index"),[25] which is published by the Department of Commerce.[26] The dollar amount tests we adopted in 1998 will be the baseline for future calculations.[27] As we noted in the Proposing Release, the use of the PCE Index is appropriate because it is an indicator of inflation in the personal sector of the U.S. economy[28] and is used in other provisions of the federal securities laws.[29] Commenters agreed that the PCE Index is an appropriate indicator of inflation[30] and that the 1998 dollar amounts are the proper baseline for future inflation adjustments.[31]

B. Exclusion of the Value of Primary Residence From Net Worth Determination

We also are amending the net worth test in the definition of "qualified client" in rule 205–3 to exclude the value of a natural person's primary residence and certain debt secured by the property.[32] This change, although not required by the Dodd-Frank Act, is similar to the change that Act requires the Commission to make to rules under

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[16] *See* Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3236 (July 12, 2011) [76 FR 41838 (July 15, 2011)] ("Order"). The Order is effective as of September 19, 2011. *Id.* The order applies to contractual relationships entered into on or after the effective date, and does not apply retroactively to contractual relationships previously in existence.

[17] The comment letters we received on the Proposing Release are available on our Web site at *http://www.sec.gov/comments/s7-17-11/s71711.shtml.*

[18] The calculation used to determine the revised dollar amounts in the tests is described below. *See infra* note 25. As we noted in the Proposing Release, an investment adviser can include in determining the amount of assets under management the assets that a client is contractually obligated to invest in private funds managed by the adviser. Only bona fide contractual commitments may be included, i.e., those that the adviser has a reasonable belief that the investor will be able to meet. See Proposing Release, *supra* note 15, at n.17.

[19] Some commenters maintained, for example, that raising the dollar amount thresholds would limit the investment options for those investors that fall below the new thresholds, and would harm smaller funds that rely on investments from investors with more limited resources to operate. *See, e.g.*, Comment Letter of Crescat Portfolio Management LLC (May 11, 2011) ("Crescat Portfolio Comment Letter"); Comment Letter of Hyonmyong Cho (June 8, 2011) ("H. Cho Comment Letter"); Comment Letter of Harold Clyde (June 4, 2011) ("H. Clyde Comment Letter"); Comment Letter of Douglas Estadt (June 7, 2011) ("D. Estadt Comment Letter"). Other commenters supported raising the dollar amount thresholds, noting that this change would ensure that the "qualified client" standard is limited to clients who are financially experienced and able to bear the risks of performance fee arrangements. *See, e.g.*, Comment Letter of Better Markets, Inc. (July 11, 2011) ("Better Markets Comment Letter"); Comment Letter of Certified Financial Planner Board of Standards, Inc. (July 11, 2011) ("CFP Board Comment Letter"); Comment Letter of Managed Funds Association (July 8, 2011) ("MFA Comment Letter"); Comment Letter of North American Securities Administrators Association, Inc. (July 11, 2011) ("NASAA Comment Letter").

[20] *See supra* note 10.

[21] Rule 205–3(e) provides that the Commission will issue an order on or about May 1, 2016 and approximately every five years thereafter adjusting the assets-under-management and net worth tests for the effects of inflation. These adjusted amounts will apply to contractual relationships entered into on or after the effective date of the order, and will not apply retroactively to contractual relationships previously in existence. *See supra* note 16. The proposed rule would have stated that the Commission's order would be *effective* on or about May 1. We have deleted the word "effective" in the final rule to reflect the fact that the effective date will likely be later than May 1. *See* Order, *supra* note 16 (setting effective date of the order approximately 60 days after the order's issuance).

[22] *See supra* note 10.

[23] *See* Comment Letter of Chris Barnard (May 31, 2011) ("C. Barnard Comment Letter"); Better Markets Comment Letter; CFP Board Comment Letter; Comment Letter of Investment Adviser Association (July 11, 2011) ("IAA Comment Letter"); MFA Comment Letter. One commenter stated that the dollar amount tests should be reevaluated more frequently. *See* NASAA Comment Letter.

[24] *See* rule 205–3(e)(1).

[25] The revised dollar amounts in the tests reflect inflation as of the end of 2010, and are rounded to the nearest $100,000 as required by section 418 of the Dodd-Frank Act. The 2010 PCE Index is 111.112, and the 1997 PCE Index is 85.433. These values are slightly different from those provided in the Proposing Release because of periodic adjustments issued by the Department of Commerce. *See* Proposing Release, *supra* note 15, at n.19; *see also infra* note 26. Assets-under-management test calculation to adjust for the effects of inflation: 111.112/85.433 × $750,000 = $975,431; $975,431 rounded to the nearest multiple of $100,000 = $1 million. Net worth test calculation to adjust for the effects of inflation: 111.112/85.433 × $1.5 million = $1,950,862; $1,950,862 rounded to the nearest multiple of $100,000 = $2 million.

[26] The values of the PCE Index are available from the Bureau of Economic Analysis, a bureau of the Department of Commerce. *See http://www.bea.gov. See also http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=64&ViewSeries=NO&Java=no&Request3Place=N&3Place=N&FromView=YES&Freq=Year&FirstYear=1997&LastYear=2010&3Place=N&Update=Update&JavaBox=no#Mid.*

[27] Rule 205–3(e) provides that the assets-under-management and net worth tests will be adjusted for inflation by (i) dividing the year-end value of the PCE Index for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of the PCE Index for the calendar year 1997, (ii) multiplying the threshold amounts adopted in 1998 ($750,000 and $1.5 million) by that quotient, and (iii) rounding each product to the nearest multiple of $100,000. For example, for the order the Commission would issue in 2016, the Commission would (i) divide the year-end 2015 PCE Index by the year-end 1997 PCE Index, (ii) multiply the quotient by $750,000 and $1.5 million, and (iii) round each of the two products to the nearest $100,000.

[28] See Clinton P. McCully, Brian C. Moyer, and Kenneth J. Stewart, "Comparing the Consumer Price Index and the Personal Consumption Expenditures Price Index," Survey of Current Business (Nov. 2007) at 26 n.1 (available at *http://www.bea.gov/scb/pdf/2007/11%20november/1107_cpipce.pdf*) (PCE Index measures changes in "prices paid for goods and services by the personal sector in the U.S. national income and product accounts" and is primarily used for macroeconomic analysis and forecasting). *See also Federal Reserve Board, Monetary Policy Report to the Congress* (Feb. 17, 2000) at n.1 (available at *http://www.federalreserve.gov/boarddocs/hh/2000/february/ReportSection1.htm#FN1*) (noting the reasons for using the PCE Index rather than the consumer price index).

[29] See Proposing Release, *supra* note 15, at n.22 and accompanying text.

[30] *See* Better Markets Comment Letter; IAA Comment Letter; Comment Letter of Georg Merkl (July 11, 2011) ("G. Merkl Comment Letter"). Although two commenters asserted that inflation is not the proper unit of measure by which to adjust net worth requirements, see Comment Letter of David Hale (May 20, 2011) and Comment Letter of Joseph V. Delaney (undated) ("J. Delaney Comment Letter"), section 205(e) of the Advisers Act requires that we adjust the dollar amount thresholds of rule 205–3 for inflation.

[31] See C. Barnard Comment Letter; G. Merkl Comment Letter.

[32] Rule 205–3(d)(1)(ii)(A).

the Securities Act, such as Regulation D.[33]

We proposed to exclude the value of a person's primary residence and the debt secured by the residence, up to the fair market value of the residence, from the calculation of a person's net worth.[34] A number of commenters supported the proposed exclusion.[35] Many agreed with our statement in the Proposing Release that the value of an individual's residence may have little relevance to the person's financial experience and ability to bear the risks of performance fee arrangements.[36] The Certified Financial Planner Board of Standards noted in its comment letter that the value of an individual's equity in a residence is more likely to be a function of the length of time that the investor has owned the home, than to be a function of the investor's experience or sophistication. Commenters also stated that excluding the value of the residence would promote regulatory consistency because it parallels the treatment of a person's primary residence in determinations of net worth under other securities rules.[37]

Many commenters objected to the exclusion of the value of a person's primary residence from the calculation of net worth. Commenters expressed concern that the exclusion would limit the investment options of less wealthy investors and restrict their access to advisory arrangements that include performance fees.[38] Some argued that excluding the value of a residence would harm advisers to smaller funds that rely on investments from less wealthy investors.[39] Others argued that home ownership, compared to home rental, may in fact evidence greater rather than less financial experience on the part of individuals.[40]

We continue to believe that the value of a person's residence generally has little relevance to the individual's financial experience and ability to bear the risks of performance fee arrangements, and therefore little relevance to the individual's need for the Act's protections from performance fee arrangements.[41] Although the process of purchasing and financing a home can contribute to an individual's financial experience, the value of the individual's equity interest in the residence reflects the prevailing market values at the time and can be a function of time in paying down the associated debt rather than a function of deliberate investment decision-making. In addition, because of the generally illiquid nature of residential assets, the value of an individual's home equity may not help the investor to bear the risks of loss that are inherent in performance fee arrangements.

Our exclusion of the value of a person's primary residence from the net worth calculation under the rule is similar to the approach that the Commission has taken in other rules to determine the financial qualifications of investors. For example, the Commission excluded the value of a person's primary residence and associated liabilities from the determination of whether a person is a "high net worth customer" in Regulation R under the Securities Exchange Act of 1934.[42] The Commission also excluded the value of a residence from the determination of whether an individual has sufficient investments to be considered a "qualified purchaser" under the Investment Company Act of 1940 ("Investment Company Act") who can invest in certain private funds that are not registered under that Act.[43] As discussed above, this approach is also reflected in the Commission's recent amendments to the definition of "accredited investor" in rules under the Securities Act, including Regulation D, as required by the Dodd-Frank Act.[44]

Some commenters voiced particular concern about the exclusion of the residential value at the same time that we adjust the dollar amount thresholds for inflation, and argued that the two changes together could cause too much change at one time.[45] We note that we revised the dollar amount threshold of the net worth test last July and that the

[33] See section 413(a) of the Dodd-Frank Act (requiring the Commission to adjust any net worth standard for an "accredited investor" as set forth in Commission rules under the Securities Act to exclude the value of a natural person's primary residence). The Dodd-Frank Act does not require that the net worth standard for an accredited investor be adjusted periodically for the effects of inflation, although it does require the Commission at least every four years to "undertake a review of the definition, in its entirety, of the term 'accredited investor' * * * [as defined in Commission rules] as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy." See section 413(b)(2)(A) of the Dodd-Frank Act. In January 2011, we proposed rule amendments to adjust the net worth standards for accredited investors in our rules under the Securities Act. See Net Worth Standard for Accredited Investors, Securities Act Release No. 9177 (Jan. 25, 2011) [76 FR 5307 (Jan. 31, 2011)] ("Accredited Investor Proposing Release"). We recently adopted those amendments substantially as proposed. See Net Worth Standard for Accredited Investors, Securities Act Release No. 9287 (Dec. 21, 2011) [76 FR 81793 (Dec. 29, 2011)] ("Accredited Investor Adopting Release").

[34] See Proposing Release, *supra* note 15, at n.28 and accompanying text.

[35] See, e.g., C. Barnard Comment Letter; CFP Board Comment Letter; MFA Comment Letter; NASAA Comment Letter.

[36] See, e.g., C. Barnard Comment Letter; CFP Board Comment Letter; NASAA Comment Letter.

[37] See, e.g., Better Markets Comment Letter; CFP Board Comment Letter; NASAA Comment Letter.

[38] See, e.g., Comment Letter of Matthew Gee (June 14, 2011); Comment Letter of Gunderson Dettmer Stough Villeneuve Franklin Hachigan LLP (July 8, 2011) ("Gunderson Dettmer Comment Letter"); Comment Letter of Alvin Suvil (July 17, 2011) ("A. Suvil Comment Letter").

[39] See, e.g., Comment Letter of Roger Alsop (June 16, 2011) ("R. Alsop Comment Letter"); J. Delaney Comment Letter; Comment Letter of Molly Huntsman (June 23, 2011) ("M. Huntsman Comment Letter"); Comment Letter of Greg Thornton (June 2, 2011); Comment Letter of Greg J. Wimmer (June 3, 2011).

[40] See M. Gee Comment Letter; Comment Letter of Douglas Wood (June 13, 2011) ("D. Wood Comment Letter"). Some commenters appeared to object to excluding residence from net worth on public policy grounds because the exclusion would discourage home ownership. See, e.g., Comment Letter of Ron Cuningham (June 25, 2011) ("R. Cuningham Comment Letter"); D. Wood Comment Letter.

[41] For example, an individual who meets the net worth test only by including the value of his primary residence in the calculation is unlikely to be as able to bear the risks of performance fee arrangements as an individual who meets the test without including the value of her primary residence. We stated in 2006, when we proposed a minimum net worth threshold for establishing when an individual could invest in hedge funds pursuant to the safe harbor of Regulation D, that the value of an individual's personal residence may bear little or no relationship to that person's knowledge and financial sophistication. See Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles, Investment Advisers Act Release No. 2576 (Dec. 27, 2006) [72 FR 400 (Jan. 4, 2007)] at Section III.B.3.

[42] See, e.g., Definition of Terms and Exemptions Relating to the "Broker" Exceptions for Banks, Securities Exchange Act Release No. 56501 (Sept. 24, 2007) [72 FR 56514 (Oct. 3, 2007)] at Section II.C.1 (excluding primary residence and associated liabilities from the fixed-dollar threshold for "high net worth customers" under Rule 701 of Regulation R, which permits a bank to pay an employee certain fees for the referral of a high net worth customer or institutional customer to a broker-dealer without requiring registration of the bank as a broker-dealer).

[43] Section 3(c)(7) of the Investment Company Act provides an exclusion from the definition of "investment company" for any "issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities." A "qualified purchaser" under section 2(a)(51) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)] includes, among others, any natural person who owns not less than $5 million in investments, as defined by the Commission. Rule 2a51–1 under the Investment Company Act includes within the meaning of "investments" real estate held for investment purposes. 17 CFR 270.2a51–1(b)(2). A personal residence is not considered an investment under rule 2a51–1, although residential property may be treated as an investment if it is not treated as a residence for tax purposes. See Privately Offered Investment Companies, Investment Company Act Release No. 22597 (Apr. 3, 1997) [62 FR 17512 (Apr. 9, 1997)] at text accompanying and following n.48.

[44] See *supra* note 33 and accompanying text.

[45] See, e.g., R. Alsop Comment Letter; R. Cuningham Comment Letter; M. Huntsman Comment Letter; A. Suvil Comment Letter.

revision was effective in September. Our current amendment of the net worth test to exclude the value of a residence, which will be effective in May 2012, will be effective approximately eight months after the previous change to the net worth test. Any further revisions of the dollar amount thresholds of rule 205–3 to adjust for inflation are not scheduled to occur until 2016.[46]

Some of the commenters who disagreed with the proposal to raise the dollar amount threshold of the net worth standard or to exclude the value of a residence from net worth, also disagreed that a person's net worth should be used as a measure of eligibility for the exemption from the performance fee restrictions.[47] These commenters did not recommend an alternative standard that is objective and verifiable, and that would effectively distinguish between those investors who do, and those who do not, need the protections of the Act's performance fee restrictions.[48]

Our amendment of the net worth standard of rule 205–3 differs from the proposed amendment in one respect. The approach we are adopting today will generally require any increase in the amount of debt secured by the primary residence in the 60 days before the advisory contract is entered into to be included as a liability. As discussed below, this change will prevent debt that is incurred shortly before entry into an advisory contract from being excluded from the calculation of net worth merely because it is secured by the individual's home.

As proposed, the amended rule would have excluded the value of a person's primary residence and the amount of all debt secured by the property that is no greater than the property's current market value.[49] The proposed treatment of debt secured by the primary residence was the same as we proposed for the calculation of net worth for accredited investors in our rules under the Securities Act.[50]

In the Proposing Release, we requested comment on whether the amendments to the rule should contain a timing provision to prevent investors from inflating their net worth by borrowing against their homes, effectively converting their home equity—which is excluded from the net worth calculation under the amendments adopted today—into cash or other assets that would be included in the net worth calculation.[51] In particular, we indicated that the amendments could provide that the net worth calculation must be made as of a date 30, 60, or 90 days prior to entry into the investment advisory contract.[52] This request for comment was similar to the one we made when we proposed amendments to the net worth standard in rules under the Securities Act, including Regulation D.[53]

As in the recently adopted accredited investor rule amendments adjusting the net worth standard,[54] the rule amendments to the qualified client net worth standard include a specific provision addressing the treatment of incremental debt secured by the primary residence that is incurred in the 60 days before the advisory contract is entered into.[55] Debt secured by the primary residence generally will not be included as a liability in the net worth calculation under the rule, except to the extent it exceeds the estimated value of the primary residence. Under the final rule amendments, however, any increase in the amount of debt secured by the primary residence in the 60 days before the advisory contract is entered into generally will be included as a liability, even if the estimated value of the primary residence exceeds the aggregate amount of debt secured by such primary residence.[56] Net worth will be calculated only once, at the time the advisory contract is entered into. The individual's primary residence will be excluded from assets and any indebtedness secured by the primary residence, up to the estimated value of the primary residence at that time, will be excluded from liabilities, except if there is incremental debt secured by the primary residence incurred in the 60 days before the advisory contract is entered into. If any such incremental debt is incurred, net worth will be reduced by the amount of the incremental debt. In other words, the 60-day look-back provision requires investors to identify any increase in mortgage debt over the 60-day period prior to entering into an advisory contract and count that debt as a liability in calculating net worth.

This approach should significantly reduce the incentive for persons to induce potential clients to take on incremental debt secured against their homes to facilitate a near-term investment. We believe a 60-day look-

[46] See rule 205–3(e).

[47] See, e.g., J. Delaney Comment Letter; Comment Letter of David Hale (May 20, 2011); Comment Letter of Tom Irvin (May 18, 2011).

[48] One commenter suggested that a "qualified client" include an individual with a bachelor's degree in a finance-related major or a master's degree in any area from an accredited U.S. university. See Comment Letter of Troy Clark (June 23, 2011). Although the suggested finance-related major requirement would help to determine whether an individual is financially knowledgeable, the suggested master's degree requirement would not, and neither requirement would establish whether an investor has sufficient practical experience in making investment decisions or is capable of bearing the risks of loss associated with performance fee arrangements.

[49] Proposed rule 205–3(d)(1)(ii)(A).

[50] See Accredited Investor Proposing Release, *supra* note 33, at text preceding n.28. One commenter recommended that all debt secured by the residence (not just debt up to the fair market value of the residence) be excluded from the net worth calculation. See G. Merkl Comment Letter. The commenter argued that excluding the debt secured by the residence up to the fair market value of the residence would require an investor to obtain a valuation of the residence from a real estate agent, which would be burdensome and costly. We note that the rule requires an estimate of the fair market value, but does not require a third party opinion on valuation for the primary residence. Furthermore, many online services provide residence valuations at no charge. In addition, if the amount of mortgage debt exceeds the value of the primary residence, excluding the entire debt would result in a higher net worth than under a conventional calculation that takes into account all assets and all liabilities. The commenter also acknowledged that, although he disagreed with the net worth test as a measure of financial sophistication, for purposes of calculating residence-related indebtedness a "close proximity between the time of taking on new debt and entering into the advisory contract could work." *Cf.* rule 205–3(d)(1)(ii)(A)(2) (requiring that all residence-related indebtedness incurred within 60 days before the advisory contract is entered into, other than as a result of the acquisition of the primary residence, be subtracted from a client's net worth for purposes of determining whether the client is a "qualified client").

[51] See Proposing Release, *supra* note 15, at Section II.B.2.

[52] *Id.* Two commenters stated that the net worth calculation should not be required to be made on a specified date prior to the day the advisory contract is entered into. See C. Barnard Comment Letter; G. Merkl Comment Letter. Another commenter stated that the net worth calculation should be required to be made on a specified date prior to the day the advisory contract is entered into to assist in protecting against refinancing transactions intended solely to inflate net worth. See NASAA Comment Letter.

[53] See Accredited Investor Proposing Release, *supra* note 33, at Specific Request for Comment Number 7 in Section II.A.

[54] See Accredited Investor Adopting Release, *supra* note 33, at text following n.34.

[55] See rule 205–3(d)(1)(ii)(A)(2).

[56] The fair market value of the primary residence is determined as of the time the advisory contract is entered into, even if the investor has changed his or her primary residence during the 60-day period. The rule provides an exception to the 60-day look-back provision for increases in debt secured by a primary residence where the debt results from the acquisition of the primary residence. Without this exception, an individual who acquires a new primary residence in the 60-day period before the advisory contract is entered into may have to include the full amount of the mortgage incurred in connection with the purchase of the primary residence as a liability, while excluding the full value of the primary residence, in a net worth calculation. The 60-day look-back provision is intended to address incremental debt secured against a primary residence that is incurred for the purpose of circumventing the net worth standard of the rule. It is not intended to address debt secured by a primary residence that is incurred in connection with the acquisition of a primary residence within the 60-day period.

back period is long enough to decrease the likelihood of circumvention of the standard by taking on new debt and waiting for the look-back period to expire. The 60-day period also is designed to be short enough to accommodate investors who may have increased their mortgage debt in the ordinary course at some point prior to entering into an advisory contract.

Another alternative to address the possibility of parties attempting to circumvent the standard would have been to provide that any debt secured by the primary residence that was incurred after the original purchase date of the primary residence would have been counted as a liability, whether or not the fair market value of the primary residence exceeded the value of the total amount of debt secured by the primary residence. We believe that such a standard would be overly restrictive and not provide for ordinary course changes to debt secured by a primary residence, such as refinancing and drawings on home equity lines. We believe that the approach we are adopting here will protect investors by addressing circumstances in which they may have been induced to incur new debt secured by the primary residence for the purpose of inflating net worth under the rule, while still permitting ordinary course changes to debt secured by the primary residence. This approach is similar to the approach the Commission recently adopted for accredited investor rule amendments adjusting the net worth standard, and it responds to commenters who urged the Commission to promote regulatory consistency in the treatment of primary residences in other similar contexts in order to promote fairness, facilitate enforcement, and provide clarity for both industry and regulators.[57]

C. Transition Provisions

We proposed two new transition provisions that would allow an investment adviser and its clients to maintain existing performance fee arrangements that were permissible when the advisory contract was entered into, even if the performance fees would not be permissible under the contract if it were entered into at a later date. We are adopting the two transition rules substantially as proposed, which commenters supported.[58] At the suggestion of one commenter we also are adopting an additional transition provision to address certain transfers of interest, as discussed below.[59] The amendments replace the current transition rules section of rule 205–3.

Paragraphs (1) and (2) of rule 205–3(c) are designed so that restrictions on performance fees apply only to new contractual arrangements and do not apply to new investments by clients (including equity owners of "private investment companies") who met the definition of "qualified client" when they entered into the advisory contract, even if they subsequently do not meet the dollar amount thresholds of the rule.[60] This approach minimizes the disruption of existing contractual relationships that met applicable requirements under the rule at the time the parties entered into them.

Rule 205–3(c)(1)[61] provides that, if a registered investment adviser entered into a contract and satisfied the conditions of the rule that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of the rule.[62] If, however, a natural person or company that was not a party to the contract becomes a party, the conditions of the rule in effect at the time they become a party will apply to that person or company. This provision means, for example, that if an individual met the $1.5 million net worth test in effect before the effective date of our 2011 order and entered into an advisory contract with a registered investment adviser before that date, the client could continue to maintain assets (and invest additional assets) with the adviser under that contract even though the net worth test was subsequently raised to $2 million and he or she no longer met the new test. If, however, another person becomes a party to that contract, the current net worth threshold will apply to the new party when he or she becomes a party to the contract.[63]

Rule 205–3(c)(2) provides that, if a registered investment adviser previously was not required to register with the Commission pursuant to section 203 of the Act and did not register, section 205(a)(1) of the Act will not apply to the contractual arrangements into which the registered adviser entered when it was not registered with the Commission.[64] This means, for example, that if an investment adviser to a private investment company with 50 individual investors was exempt from registration with the Commission in 2009, but then subsequently registered with the Commission because it was no longer exempt from registration or because it chose voluntarily to register, section 205(a)(1) will not apply to the contractual arrangements the adviser entered into before it registered, including the accounts of the 50 individual investors with the private investment company and any additional investments they make in that company. If, however, any other individuals

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[57] *See* Accredited Investor Adopting Release, *supra* note 33, at text following n.46; *see, e.g.*, Better Markets Comment Letter; NASAA Comment Letter.

[58] Rule 205–3(c)(1); rule 205–3(c)(2). *See, e.g.*, C. Barnard Comment Letter; Gunderson Dettmer Comment Letter; M. Huntsman Comment Letter; IAA Comment Letter; MFA Comment Letter.

[59] *See* rule 205–3(c)(3).

[60] A "private investment company" is a company that is excluded from the definition of an "investment company" under the Investment Company Act by reason of section 3(c)(1) of that Act. Rule 205–3(d)(3). Under rule 205–3(b), the equity owner of a private investment company, or of a registered investment company or business development company, is considered a client of the adviser for purposes of rule 205–3(a). We adopted this provision in 1998, and the provision was not affected by our subsequent rule amendments and related litigation concerning the registration of certain hedge fund advisers. *See* 1998 Adopting Release, *supra* note 7; *Goldstein* v. *Securities and Exchange Commission*, 451 F.3d 873 (DC Cir. 2006).

[61] Rule 205–3(c)(1), as amended, modifies the existing transition rule in rule 205–3(c)(1), which permits advisers and their clients that entered into a contract before August 20, 1998, and satisfied the eligibility criteria in effect on the date the contract was entered into, to maintain their existing performance fee arrangements.

[62] One commenter supported the provisions allowing advisers to continue to provide advisory services under performance fee arrangements that were permitted at the time the contract was entered into but stated that the rule should prohibit an adviser from charging performance fees to investors that are not qualified clients with respect to money committed after the effective date for the rule amendments. See G. Merkl Comment Letter. We believe such an approach would be unnecessarily disruptive to advisory relationships.

[63] Rule 205–3(c)(1). Similarly, a person who invests in a private investment company advised by a registered investment adviser must satisfy the rule's conditions when he or she becomes an investor in the company. See rule 205–3(b) (equity owner of a private investment company is considered a client of a registered investment adviser for purposes of rule 205–3(a)).

[64] Section 205(a)(1) will apply, however, to contractual arrangements into which the adviser enters after it is required to register with the Commission. See rule 205–3(c)(2). The approach of subsection (c)(2) is similar to the transition provisions we adopted for the registration of investment advisers to private funds. See Registration Under the Advisers Act of Certain Hedge Fund Advisers, Investment Advisers Act Release No. 2333 (Dec. 2, 2004) [69 FR 72054 (Dec. 10, 2004)]. We are adopting the subsection substantially as proposed, but have made minor changes to clarify that the transition provision applies only to contractual arrangements with advisers that were not required to register and did not register with the Commission. Our proposed subsection would have applied to contractual arrangements with any registered investment adviser that previously was "exempt" from the requirement to register with the Commission. The revised language clarifies that the transition provision applies to contractual arrangements with advisers when they were not required to register (even if they were not "exempt"), and does not apply to contractual arrangements entered into with advisers when they were registered (even if they were not required to register). Investment advisers that previously registered already are subject to section 205(a)(1) and rule 205–3, and therefore would not need the transition relief of rule 205–3(c)(2).

become new investors in the private investment company or if the original investors became investors in a different private investment company managed by the adviser after the adviser registers with the Commission, section 205(a)(1) will apply to the adviser's relationship with the investors with regard to their new investments.[65]

Finally, at the suggestion of one commenter, we have revised the third paragraph of rule 205–3(c), to allow for limited transfers of interests from a qualified client to a person that was not a party to the contract and is not a qualified client at the time of the transfer.[66] The approach we are taking is similar to the approach we adopted in rule 3c–6 under the Investment Company Act. Rule 3c–6 provides that, in the case of a transfer of ownership interest in a private investment company by gift or bequest, or pursuant to an agreement relating to a legal separation or divorce, the beneficial owner of the interest will be considered to be the person who transferred the interest.[67] We believe that, when those types of transfers occur, the transferee does not make a separate investment decision to enter into an advisory contract with the adviser, but is the recipient, perhaps involuntarily, of the benefits of a pre-existing contractual relationship. Because of the circumstances of these transfers, we believe the transferee is not of the type that needs the protections of the performance fee restrictions. We are therefore amending paragraph (3) of rule 205–3(c) to provide that, if an owner of an interest in a private investment company transfers an interest by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, the transfer will not cause the transferee to "become a party" to the contract and will not cause section 205(a)(1) of the Act to apply to such transferee. Thus, transfers in these circumstances will not cause the transferee to have to meet the definition of a qualified client under rule 205–3.[68]

D. Effective Date

The rule amendments we are adopting today will be effective on May 22, 2012. In addition, in order to minimize the disruption of contractual relationships that met applicable requirements at the time the parties entered into them, the Commission will not object if advisers rely or relied upon the amended transition provisions of rule 205–3(c) before that date.[69]

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. In the Proposing Release, we analyzed the costs and benefits of the proposed rules and sought comment on all aspects of the cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in the analysis. Only two commenters addressed the cost-benefit analysis.[70] These commenters focused on the costs of the rule but did not provide any empirical data.

As stated above, section 205(a)(1) of the Advisers Act generally restricts an investment adviser from entering into an advisory contract that provides for performance-based compensation.[71] Congress restricted performance compensation arrangements to protect advisory clients from arrangements it believed might encourage advisers to take undue risks with client funds to increase advisory fees.[72] Congress subsequently authorized the Commission in section 205(e) of the Advisers Act to exempt any advisory contract from the performance fee restrictions if the contract is with persons that the Commission determines do not need the protections of those restrictions. Section 205(e) provides that the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as "financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205]."

The Commission adopted rule 205–3 to exempt an investment adviser from the restrictions against charging a client performance fees where a client has a specified net worth or amount of assets under management. Section 418 of the Dodd-Frank Act amended section 205(e) to require that the Commission adjust for inflation the dollar amount thresholds in rules promulgated under section 205(e) within one year of enactment of the Dodd-Frank Act and every five years thereafter. Generally an inflation adjustment is designed to help make the dollar amount thresholds in a provision continue to serve the same purposes over time. The amendments to rule 205–3 providing that the Commission will issue orders every five years adjusting for inflation the dollar amount thresholds of the rule will codify the Dodd-Frank Act's amendment of section 205(e) of the Advisers Act that requires the Commission to issue these orders.[73] Also, pursuant to section 418's requirements, the Commission issued an order in July 2011 revising the threshold of the assets-under-management test to $1 million, and of the net worth test to $2 million. The rule amendments will codify in the rule the changes already made to the dollar amount thresholds in the July 2011 Order, and will have no separate economic effect.

As proposed, we are amending rule 205–3 to exclude the value of a natural person's primary residence and certain debt secured by the property from the determination of whether a person has sufficient net worth to be considered a "qualified client." We are also modifying the transition provisions of the rule to take into account performance fee arrangements that were permissible when they were entered

[65] One commenter recommended that we revise the rule to accommodate fund-of-funds purchases when the acquiring funds are private investment companies. *See* MFA Comment Letter. The commenter recommended that the rule "clarify" that an acquiring private investment company is able to pay performance fees to the adviser of an acquired private investment company even if some of the investors in the acquiring private investment company are not qualified clients at the time the investment is made in the acquired private investment company. We are not making the suggested revision to the final rule, because it would permit advisers to pool small client accounts to circumvent the eligibility standards of rule 205–3(d)(1) and would permit performance fee arrangements that currently are not permissible under rule 205–3(b). As we stated in 1998, rule 205–3(b) specifies that the requirement to look through to each investor of a private investment company applies to each tier of a funds-of-funds structure. *See* 1998 Adopting Release, *supra* note 7, at Section II.C. ("Under [Rule 205–3(b)], each 'tier' of such entities must be examined in this manner. Thus, if a private investment company seeking to enter into a performance fee contract (first tier company) is owned by another private investment company (the second tier company), the look through provision applies to the second (and any other) level private investment company, and thus the adviser must look to the ultimate client to determine whether the arrangement satisfies the requirements of the rule.").

[66] *See* Gunderson Dettmer Comment Letter.

[67] See rule 3c–6(b) under the Investment Company Act [17 CFR 270.3c–6(b)].

[68] A gift transfer, however, would need to be a bona fide gift and could not be used as a means to avoid the protections of section 205 of the Act, for example by transferring an interest in a private fund supposedly as a gift but in reality in exchange for payment.

[69] As discussed above, some advisers may have entered into contractual relationships with clients who met the requirements of the rule at the time the parties entered into them, but who no longer meet the requirements of the amended rule. *See supra* Section II.C. For example, some registered investment advisers may have entered into advisory contracts with clients who met the $1.5 million net worth test when that test was applicable, but who would not meet the $2 million net worth test of the revised rule.

[70] *See* Comment Letter of Phillip Goldstein (May 24, 2011) ("P. Goldstein Comment Letter"); G. Merkl Comment Letter.

[71] *See supra* Section I.

[72] *Id.*

[73] Section 418 of the Dodd-Frank Act.

into. We analyze the costs and benefits of these provisions below.

A. Benefits

The exclusion of the value of an individual's primary residence will benefit certain investors. As discussed above, the Act's restrictions on performance fee arrangements are designed to protect advisory clients from arrangements that encourage advisers to take undue risks with client funds to increase advisory fees, while rule 205–3 is designed to permit clients who are financially experienced and able to bear the risks of performance fee arrangements to enter into those arrangements.[74] We believe that the value of an individual's primary residence may bear little or no relationship to that person's financial experience or ability to bear the risks of performance fee arrangements. The value of the individual's equity interest in the residence reflects the prevailing market values at the time and can be a function of time in paying down the associated debt rather than a function of deliberate investment decision-making. In addition, because of the generally illiquid nature of residential assets, the value of an individual's home equity may not help the investor to bear the risks of loss that are inherent in performance fee arrangements. Therefore, some of the clients who do not meet the net worth test of rule 205–3 without including the value of their primary residence may not possess the financial experience or ability to bear the risks of performance fee arrangements. We estimate that the exclusion of the value of an individual's primary residence will result in up to 1.3 million households that no longer qualify as "qualified clients" under the revised net worth test and therefore will now be protected by the performance fee restrictions in section 205 of the Advisers Act.[75]

As discussed above, the exclusion of the value of an individual's primary residence from the calculation of net worth under the rule is similar to changes that Congress required the Commission to make to rules under the Securities Act, including Regulation D.[76] As we noted when we recently adopted those rule amendments, section 413(a) of the Dodd-Frank Act required us to adjust the "accredited investor" net worth standards of certain rules under the Securities Act that apply to individuals, by "excluding the value of the primary residence."[77] The amendment to rule 205–3 under the Advisers Act we are adopting today, as some commenters argued, will promote regulatory consistency in the treatment of primary residences between this rule and other rules that the Commission has adopted that distinguish high net worth individuals from less wealthy individuals.[78]

The amendments to the rule's transition provisions will allow advisory clients and investment advisers to avoid certain costs resulting from the statutory mandate to adjust for inflation and the Commission's resultant July 2011 Order. The amendments allow an investment adviser and its clients to maintain existing performance fee arrangements that were permissible when the advisory contract was entered into, even if performance fees would not be permissible under the contract if it were entered into at a later date. These transition provisions are designed so that the restrictions on the charging of performance fees apply to new contractual arrangements and do not apply retroactively to existing contractual arrangements, including investments in private investment companies. Otherwise, advisory clients and investment advisers might have to terminate contractual arrangements into which they previously entered and enter into new arrangements, which could be costly to investors and advisers.

B. Costs

The amendments exclude the value of a person's primary residence and generally exclude debt secured by the property (if no greater than the current market value of the residence) from the calculation of a person's net worth.[79] Based on data from the Federal Reserve Board, approximately 5.5 million households have a net worth of more than $2 million including the equity in the primary residence (*i.e.*, value minus debt secured by the property), and approximately 4.2 million households have a net worth of more than $2 million excluding the equity in the primary residence.[80] Therefore, approximately 1.3 million households will not meet a $2 million net worth test under the revised test, and will therefore not be considered "qualified clients," when the value of the primary residence is excluded from the test.[81] Excluding the value of the primary residence (and debt secured by the property up to the current market value of the residence) means that 1.3 million households that would have met the net worth threshold if the value of the residence were included, as is currently permitted, will no longer be "qualified clients" under the revised net worth test and therefore will be unable to enter into performance fee contracts unless they meet another test of rule 205–3.[82]

For purposes of this cost-benefit analysis, Commission staff assumes that 25 percent of the 1.3 million households would have entered into new advisory contracts that contained performance fee arrangements after the compliance date of the amendments, and therefore approximately 325,000 clients will not meet the revised net worth test.[83]

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[74] *See supro* notes 3 and 6.

[75] *See infra* notes 79–81. As discussed above, the amendments to rule 205–3 also exclude from the net worth test the amount of debt secured by the primary residence that is no greater than the property's current market value. The exclusion of the debt might limit these benefits in some circumstances. For example, if a client meets the net worth test as a result of the exclusion of debt secured by the primary residence and the market value of the primary residence were to decline to the extent that the debt could not be satisfied by the sale of the residence, the client might be less able to bear the risks related to the performance fee contract and the investments that the adviser might make on behalf of the client.

[76] *See supro* note 33.

[77] *See* Accredited Investor Adopting Release, *supro* note 33, at n.18 and accompanying text.

[78] *See supro* notes 42–44 and 57 and accompanying text.

[79] As discussed above, any increase in the amount of debt secured by the primary residence in the 60 days before the securities are purchased will be included in the net worth calculation as a liability, regardless of the estimated value of the residence. *See supro* Section II.B; rule 205–3(d)(1)(ii)(A)(2).

[80] These figures are derived from the 2007 Federal Reserve Board, Survey of Consumer Finances. These figures represent the net worth of households rather than individual persons who might be clients. More information regarding the survey may be obtained at *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.*

[81] Although some of these 1.3 million households may be grandfathered by the transition provisions of the rule, we assume for the purposes of our analysis that none of these households will be grandfathered. This assumption may therefore result in an overestimation of the costs of the rule amendments.

[82] This estimate, as described in the Proposing Release, was not premised on the notion that investors would borrow against the equity in their primary residence shortly before the calculation of net worth. *See* Proposing Release, *supra* note 15, at nn. 47–48 and accompanying text. The 60-day look-back provision in rule 205–3 that we are adopting today, because it reduces the incentives to incur debt secured by residences in order to boost net worth under the rule, strengthens the accuracy of our estimate. *See supra* notes 55–57 and accompanying text.

[83] The assumption that 25% of these investors would have entered into new performance fee arrangements is based on data compiled in a 2008 report sponsored by the Commission. *See Angelo A. Hung et al., Investor and Industry Perspectives on Investment Advisers and Broker-Dealers* 130 (Table C.1) (2008) (available at *http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf*). That report indicated that 20% of investment advisers charge performance fees. Id. at 105 (Table 6.13). Commission staff assumes the percentage of investment advisers charging performance fees reflects investor demand for these advisory arrangements. Although the report indicates that 20% of investment advisers charge performance fees, the use of a 25% assumption is intended to

Continued

Commission staff estimates that about 40 percent of those 325,000 potential clients (*i.e.*, 130,000) will separately meet the "qualified client" definition under the assets-under-management test, and therefore will be able to enter into performance fee arrangements.[84] The remaining 60 percent (195,000 households) will have access only to those investment advisers (directly or through the private investment companies they manage) that charge advisory fees other than performance fees.[85] Some of these investors may be negatively affected by their inability to enter into performance-based compensation arrangements with investment advisers (which arrangements in some ways align the advisers' interests with the clients' interests). These investors also may experience differences in their investment options and returns, changes in advisory service, and the cost of being unable to enter into advisory contracts with their preferred advisers. For purposes of this cost-benefit analysis, Commission staff assumes that approximately 80 percent of the 195,000 households (*i.e.*, 156,000 households) will enter into non-performance fee arrangements, and that the other 20 percent (*i.e.*, 39,000 households) will decide not to invest their assets with an adviser.[86] Commission staff anticipates that the non-performance fee arrangements into which these clients will enter may contain management fees that yield advisers approximately the same amount of fees that clients would have paid under performance fee arrangements. Under these non-performance fee arrangements, if the adviser's performance is not positive or does not reach the level at which it would have accrued performance fees (*i.e.*, the "hurdle rate" of return), a client might end up paying higher overall fees than if he had paid performance fees.[87]

Commission staff estimates that the remaining 39,000 households that would have entered into advisory contracts, if the value of the client's primary residence were not excluded from the calculation of a person's net worth, will not enter into advisory contracts. Some of these households will likely seek other investment opportunities. Other households may forego professional investment management altogether because of the higher value they place on the alignment of advisers' interests with their own interests associated with the use of performance fee arrangements.

We recognize that the exclusion of the value of a person's primary residence from the calculation of a person's net worth will reduce the pool of potential qualified clients for advisers. This, in turn, might result in a reduction in the total fees collected by investment advisers. In order to replace those clients and lost revenue, some advisers may choose to market their services to more potential clients, which may result in increased marketing and administrative costs.[88]

Although some commenters asserted that these amendments would harm small advisers or less wealthy clients, commenters did not provide any quantitative data to support their statements.[89] As discussed above, advisers may charge advisory fees other than performance fees in order to obtain revenue from clients who do not meet the definition of "qualified clients." In addition, clients who no longer meet the net worth test as a result of the exclusion of their primary residence likely would have invested a smaller amount of assets than other clients who continue to meet the test. As a result, the revenue loss to investment advisers from the exclusion of these clients from the performance fee exemption may be mitigated. Moreover, as mentioned above, less wealthy clients can enter into non-performance based compensation arrangements and seek other investment opportunities. Therefore, for the reasons discussed above, we believe that the amendments are unlikely to impose a significant net cost on most advisers and clients.

One commenter asserted that because liabilities in excess of the value of the primary residence would be included in the net worth calculation the Commission should include in its analysis the cost to clients of obtaining valuations from real estate agents.[90] First, currently investors may include the value of their primary residence in the calculation of their net worth and, as such, those investors that choose to do so must be estimating the value of the primary residence in order to calculate their net worth. Second, the rule requires an estimate, but does not require a third party opinion on valuation either for the primary residence or for any other assets or liabilities. Third, as we noted previously, many online services provide residence valuations at no charge.[91]

Some commenters argued that excluding the value of an investor's primary residence from the net worth test of the rule at the same time as adjusting the rule's dollar amount thresholds for inflation would cause too much change at one time.[92] Although we attribute the costs of inflation-adjusting the dollar amount thresholds of the rule to the Dodd-Frank Act and the order we issued thereunder, we have considered the relative magnitude of each of these changes to the net worth standard in determining the significance of making these changes at the same time. Based on data from the Federal Reserve Board, approximately 7 million households have a net worth of more than $1.5 million (the previous net worth threshold, including primary residence), and approximately 5.5 million households have a net worth of more than $2 million (the revised net worth threshold we established by order in July 2011, including primary residence).[93] Therefore, inflation-adjusting the dollar amount threshold of the net worth test from $1.5 to $2 million will have caused about 1.5 million households to no longer meet the net worth test of the rule. Therefore the numerical effect of the inflation adjustment of the net worth test's dollar amount threshold (1.5 million households) is slightly greater than the exclusion of primary residence from the net worth test (1.3 million

overestimate rather than underestimate costs, especially given the inherent uncertainty surrounding hypothetical events. It is also notable that an average of only 37% of investors indicated they would seek investment advisory services in the next five years. The estimate concerning 1.3 million households is derived from the 2007 Federal Reserve Board Survey of Consumer Finances. *See supra* note 80 and accompanying and following text.

[84] This estimate is based on data filed by registered investment advisers on Form ADV.

[85] Commission staff estimates that less than one percent of registered investment advisers are compensated solely by performance fees, based on data from filings by registered investment advisers on Form ADV.

[86] This assumption is based on the idea that a substantial majority of investment advisers that typically charge performance fees and that in the future would calculate a potential client's net worth and determine that it does not meet the $2 million threshold, will offer alternate compensation arrangements in order to offer their services. As noted above, Commission staff estimates that less than one percent of registered advisers charge performance fees exclusively. *See supra* note 85.

[87] Performance fee arrangements typically include a "hurdle rate," which is a minimum rate of return that must be exceeded before the performance fee can be charged. *See, e.g., Tamar Frankel, The Regulatian af Maney Managers* § 12.03[F] (2d ed. Supp. 2009).

[88] Although advisers that charge performance fees typically require investment minimums of $10,000 or more, one of the steps that advisers may take to market their services to a larger number of potential clients is to reduce their investment minimums. This may result in slightly higher administrative costs for investment advisers that choose to take such action.

[89] *See supra* notes 38–39 and accompanying text.

[90] *See* G. Merkl Comment Letter.

[91] *See supra* note 50.

[92] *See supra* note 45 and accompanying text.

[93] *See supra* note 80.

households).[94] As discussed above, we are not making these two changes to the rule at the same time.[95] We revised the dollar amount threshold of the net worth test for inflation in July 2011 (as required by statute), and the revision was effective in September 2011. Our current amendment of the net worth test to exclude the value of a primary residence, which will be effective in May 2012, will be effective approximately eight months after the previous change to the net worth test.[96] We believe that what has turned out to be a two-step process (adjustment for inflation followed by exclusion of primary residence), with roughly equal results on the numbers of "qualified clients," will help to ameliorate the economic impact of the two rule revisions on investment advisers. In addition, we are concerned that delaying beyond 90 days the effective date of excluding primary residence from the net worth standard might encourage some advisers to focus their efforts on entering into performance fee arrangements with clients who will not meet the rule's net worth standards after the effective date.

The amendments to the rule's transition provisions are not likely to impose any new costs on advisory clients or investment advisers. As discussed above, the amendments allow an investment adviser and its clients to maintain existing performance fee arrangements that were permissible when the advisory contract was entered into, even if performance fees would not be permissible under the contract if it were entered into at a later date. The amendments also allow for the transfer of an ownership interest in a private investment company by gift or bequest, or pursuant to an agreement relating to a legal separation or divorce to a party that is not a qualified client.[97]

We do not expect that adjustment of the dollar amount thresholds in rule 205–3, which codifies the adjustments that the Commission effected in its July 2011 order, will impose new costs on advisory clients or investment advisers. The adjustments will have no effect on existing contractual relationships that met applicable requirements under the rule at the time the parties entered into them, because those relationships may continue under the transition provisions of the rule. Although an investment adviser could be prohibited from charging performance fees to new clients to whom it could have charged performance fees if the advisory contract had been entered into before the adjustment of the dollar thresholds, we attribute this effect to the Dodd-Frank Act rather than to this rulemaking. One commenter stated that rather than addressing the contention that the adjustment to the dollar amount thresholds is unfair to small investors, the Commission "passed the buck" back to Congress.[98] The Commission, however, is required to adjust the dollar amount thresholds for the effects of inflation. Exempting less wealthy investors from the limits would be contrary to the purpose of the dollar amount thresholds, which is to limit the availability of the exemption to clients who are financially experienced and able to bear the risks of performance fee arrangements.

Section 418 of the Dodd-Frank Act does not specify how the Commission should measure inflation in adjusting the dollar amount thresholds. We proposed, and are adopting, the PCE Index because it is widely used as a broad indicator of inflation in the economy and because the Commission has used the PCE Index in other contexts. It is possible that the use of the PCE Index to measure inflation might result in a larger or smaller dollar amount for the two thresholds than the use of a different index, but the rounding required by the Dodd-Frank Act (to the nearest $100,000) likely negates any difference between indexes.

IV. Paperwork Reduction Act

The amendments to rule 205–3 under the Investment Advisers Act do not contain any "collection of information" requirements as defined by the Paperwork Reduction Act of 1995, as amended ("PRA").[99] Accordingly, the PRA is not applicable. We received no comments on any PRA issues.

V. Regulatory Flexibility Act Certification

The Commission certified in the Proposing Release, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 ("RFA"),[100] that the proposed rule amendments would not, if adopted, have a significant impact on a substantial number of small entities.[101] As we explained in the Proposing Release, under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year ("small adviser").[102]

Based on information in filings submitted to the Commission, 617 of the approximately 11,888 investment advisers registered with the Commission are small entities. Only approximately 20 percent of the 617 registered investment advisers that are small entities (about 122 advisers) charge any of their clients performance fees. In addition, 24 of the 122 advisers required at the time of the Proposing Release an initial investment from their clients that would meet the then current assets-under-management threshold ($750,000), which advisory contracts will be grandfathered into the exemption provided by rule 205–3 under the amendments. Therefore, if these advisers in the future raise those minimum investment levels to the revised level that we issued by order ($1 million), those advisers could charge their clients performance fees because the clients would meet the assets-under-management test, even if they would not meet the revised net worth test that excludes the value of the client's primary residence. For these reasons, the Commission believes that the amendments to rule 205–3 will not have a significant economic impact on a substantial number of small entities. The Commission requested written comments regarding the certification. One commenter stated that the Proposing Release includes "suspicious" quantified data to support the claim as to how few advisers will be affected by the required review every five years.[103] The commenter provided no further detail about why the quantified data was suspicious, or any

[94] See *supra* text accompanying note 81.

[95] See *supra* note 46 and preceding text.

[96] Any further revisions of the dollar amount thresholds of rule 205–3 to adjust for inflation are not scheduled to occur until 2016. See rule 205–3(e).

[97] Rule 205–3(c)(3). The rule provides that for purposes of paragraphs 205–3(c)(1) (transition rule for registered investment advisers) and 205–3(c)(2) (transition rule for registered investment advisers that were previously not registered) the transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to become a party to the contract and will not cause section 205(a)(1) of the Act to apply to such transferee.

[98] See P. Goldstein Comment Letter.

[99] 44 U.S.C. 3501–3520.

[100] 5 U.S.C. 605(b).

[101] See Proposing Release, *supra* note 15, at Section VI.

[102] Rule 0–7(a).

[103] See Comment Letter of David Flatray (May 29, 2011).

alternative empirical data, and did not address the number of small advisers that would be affected.[104]

VI. Statutory Authority

The Commission is adopting amendments to rule 205–3 pursuant to the authority set forth in section 205(e) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–5(e)].

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Rules

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The general authority citation for Part 275 continues to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.205–3 is amended by:
■ a. Revising paragraph (c);
■ b. Revising paragraphs (d)(1)(i) and (ii); and
■ c. Adding paragraph (e).

The revisions and addition read as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.

* * * * *

(c) *Transition rules*—(1) *Registered investment advisers.* If a registered investment adviser entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section; *Provided,* however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect at that time will apply with regard to that person or company.

(2) *Registered investment advisers that were previously not registered.* If an investment adviser was not required to register with the Commission pursuant to section 203 of the Act (15 U.S.C. 80b–3) and was not registered, section 205(a)(1) of the Act will not apply to an advisory contract entered into when the adviser was not required to register and was not registered, or to an account of an equity owner of a private investment company advised by the adviser if the account was established when the adviser was not required to register and was not registered; *Provided,* however, that section 205(a)(1) of the Act will apply with regard to a natural person or company who was not a party to the contract and becomes a party (including an equity owner of a private investment company advised by the adviser) when the adviser is required to register.

(3) *Certain transfers of interests.* Solely for purposes of paragraphs (c)(1) and (c)(2) of this section, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to "become a party" to the contract and will not cause section 205(a)(1) of the Act to apply to such transferee.

(d) * * *

(1) * * *

(i) A natural person who, or a company that, immediately after entering into the contract has at least $1,000,000 under the management of the investment adviser;

(ii) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $2,000,000. For purposes of calculating a natural person's net worth:

(*1*) The person's primary residence must not be included as an asset;

(*2*) Indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

(*3*) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(51)(A)) at the time the contract is entered into; or

* * * * *

(e) *Inflation adjustments.* Pursuant to section 205(e) of the Act, the dollar amounts specified in paragraphs (d)(1)(i) and (d)(1)(ii)(A) of this section shall be adjusted by order of the Commission, on or about May 1, 2016 and issued approximately every five years thereafter. The adjusted dollar amounts established in such orders shall be computed by:

(1) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year 1997;

(2) For the dollar amount in paragraph (d)(1)(i) of this section, multiplying $750,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of $100,000; and

(3) For the dollar amount in paragraph (d)(1)(ii)(A) of this section, multiplying $1,500,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of $100,000.

Dated: February 15, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–4046 Filed 2–21–12; 8:45 am]

BILLING CODE 8011–01–P

[104] *Id.*

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10 and 163

[CBP Dec. 12–02; USCBP–2011–0030]

RIN 1515–AD75

Duty-Free Treatment of Certain Visual and Auditory Materials

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, the proposed amendments to the U.S. Customs and Border Protection (CBP) regulations to permit an applicant to file the

documentation required for duty-free treatment of certain visual and auditory materials of an educational, scientific, or cultural character under subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), at any time prior to the liquidation of the entry. This change allots more time for the importer to provide the necessary certification documentation to CBP and serves to align the filing of required certification documentation with a change in CBP policy that extended the liquidation cycle for entries in the ordinary course of business from 90 days to 314 days after the date of entry.

DATES: *Effective date:* March 23, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 325–0132.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2011, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (76 FR 51914) a proposal to amend title 19 of the Code of Federal Regulations (19 CFR) regarding the filing of documentation for duty-free treatment of certain visual and auditory materials of an educational, scientific, or cultural character under subheading 9817.00.40, HTSUS. Specifically, CBP proposed amendments to the regulations to provide for the suspension of the liquidation cycle for entries in the ordinary course of business from 90 days to 314 days after the date of entry, or until the required documentation is submitted, whichever occurs first. This proposal also proposed to make a non-substantive change to the listing in the Appendix to Part 163 to reflect the State Department rather than the abolished U.S. Information Agency (USIA).

CBP solicited comments from the public on the proposed rulemaking; however, CBP received no comments in response to its solicitation in 76 FR 51914.

Conclusion

In light of the fact that no comments were submitted in response to CBP's solicitation of public comment, CBP has determined to adopt as a final rule the proposed amendments in the Notice of Proposed Rulemaking published in the **Federal Register** (76 FR 51914) on August 19, 2011.

The Regulatory Flexibility Act and Executive Order 12866

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to examine the impact a rule will have on small entities. A small entity may be: a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business under the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). Because these amendments provide more time for an importer to obtain the State Department certificate, CBP certifies under 5 U.S.C. 605(b) that the amendments will not have a significant economic impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Paperwork Reduction Act

As there are no new collections of information in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the CBP Regulations

For the reasons set forth above, parts 10 and 163 of title 19 of the Code of Federal Regulations (19 CFR parts 10 and 163) are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read and a specific authority is added for § 10.121 as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.121 also issued under 19 U.S.C. 2501.

* * * * *

■ 2. Section 10.121(b) is revised to read as follows:

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

* * * * *

(b) Articles entered under subheading 9817.00.40, HTSUS, will be released from CBP custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the port director. Liquidation of an entry which has been released under this procedure will be suspended for a period of 314 days from the date of entry or until the required document is submitted, whichever comes first. In the event that documentation is not submitted before liquidation, the merchandise will be classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

PART 163—RECORDKEEPING

■ 3. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

Appendix to Part 163—[Amended]

■ 4. Section IV is amended by removing the listing "§ 10.121 Certificate from USIA for visual/auditory materials" and adding in its place the listing "§ 10.121 Certificate from the U.S. Department of State for visual/auditory materials".

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: February 16, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012–4091 Filed 2–21–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9580]

RIN 1545–BJ89

Rewards and Awards for Information Relating to Violations of Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the payment of rewards under section 7623(a) of the Internal Revenue Code for detecting underpayments or violations of the internal revenue laws and whistleblower awards under section 7623(b). The guidance is necessary to clarify the definition of proceeds of amounts collected and collected proceeds under section 7623. This regulation provides needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623.

DATES: *Effective Date:* This final regulation is effective on February 22, 2012.

Applicability Date: For dates of applicability, see § 301.7623–1(g).

FOR FURTHER INFORMATION CONTACT: Kirsten N. Witter, at (202) 927–0900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 7623(a) provides the Secretary with the authority to pay such sums as he deems necessary from proceeds of amounts collected based on information provided to the Secretary when the information relates to the detection of underpayments of tax or the detection and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same. Section 7623(b) provides the Secretary with the authority to pay awards to individuals if the Secretary proceeds with an administrative or judicial action described in section 7623(a) that results in collected proceeds based on information provided by the individuals. Section 301.7623–1(a) of the regulations on Procedure and Administration currently provides that proceeds of amounts (other than interest) collected by reason of the information provided include both amounts collected because of the information provided and amounts collected prior to receipt of the information if the information leads to the denial of a claim for refund that otherwise would have been paid. 63 FR 44777.

Section 301.7623–1(a) was promulgated prior to amendments of section 7623 as part of the Tax Relief and Health Care Act of 2006, division A, section 406, Public Law 109–432, 120 Stat. 2958. The amendments designated existing section 7623 as section 7623(a). Before the 2006 amendments, section 7623 provided that rewards shall be paid "from the proceeds of amounts (other than interest) collected by reason of the information provided * * *." The 2006 Act struck the "other than interest" language. The Act also added section 7623(b), which provides that in certain cases individuals shall receive an award of at least 15% but not more than 30% of the collected proceeds resulting from the action with which the Secretary proceeded based on information brought to the attention of the Secretary by the individual. The Act also created the IRS Whistleblower Office, which is responsible for administering a whistleblower program within the IRS.

On January 18, 2011, a notice of proposed rulemaking (REG–131151–10) was published in the **Federal Register** (76 FR 2852) clarifying the definitions of proceeds of amounts collected and collected proceeds for purposes of section 7623, and providing that the provisions of Treas. Reg. § 301.7623–1(a) concerning refund prevention claims are applicable to claims under section 7623(a) and (b). The proposed regulations further provide that the reduction of an overpayment credit balance is also considered proceeds of amounts collected and collected proceeds under section 7623.

Seventeen written comments responding to the notice of proposed rulemaking were received. A public hearing was held on May 11, 2011. After consideration of the comments and hearing testimony, the regulation is adopted as proposed.

Other issues concerning the whistleblower statute, including terminology, additional definitions, and implementation of the statute, all of which were beyond the scope of these regulations, have been deferred and will be considered and addressed, if appropriate, in future guidance.

Summary of Comments

Several commenters recommended removal of "overpayment" as a modifier of credit balance. The commenters suggested that the term only applied to individual taxpayers, and would discourage claimants from coming forward with information about corporate taxpayers. Further, the commenters stated that "overpayment" unnecessarily limits the definition of collected proceeds as credit balances may arise in circumstances other than an overpayment.

The use of the term "overpayment credit balance" was intended to include amounts that have been credited to a taxpayer's account and that would have been refunded to the taxpayer under section 6402 but for the information provided by the whistleblower. These amounts represent monies credited to the taxpayer's account that are available to pay any tax liability or certain other liabilities, or to be refunded to the taxpayer. Overpayment credit balances are distinguishable from other types of balances shown on a taxpayer's account, such as a cash deposit under section 6603. Both individual and corporate taxpayers may have overpayment credit balances. Accordingly, the final regulations retain the term "overpayment credit balance" as consistent with the payment and refund provisions of the Code.

A number of commenters recommended that the definition of collected proceeds specifically include net operating losses (NOLs). In contrast to overpayment credit balances, NOLs and similar tax attributes do not represent amounts credited to the taxpayer's account that are directly available to satisfy current or future tax liabilities or that can be refunded. Rather, tax attributes such as NOLs are component elements of a taxpayer's tax liability. If an NOL claimed by a taxpayer is disallowed as a result of information provided by a whistleblower, the IRS will factor that disallowance into the computation of the taxpayer's liability, which may, in turn, result in collected proceeds. For example: A taxpayer reports an NOL of $10 million for 2009 and a whistleblower's information results in a reduction of the NOL to $5 million. If the NOL is unused as of the date the IRS computes the amount of collected proceeds, there are no collected proceeds. If, however, the 2009 NOL was partially carried back to 2008, initially generating a $3 million refund, and the whistleblower's information reduced the carryback amount, resulting in a $1.5 million reduction in the refund for 2008, then the amount of the erroneous refund recovered and collected would be collected proceeds. The final regulation's definition of collected proceeds, therefore, does not refer explicitly to NOLs, tax credits, or any other tax attributes that may factor

into the computation of a particular taxpayer's liability.

Several commenters suggested that collected proceeds should include criminal fines. Under the Victims of Crimes Act of 1984, criminal fines that are imposed on a defendant by a district court are deposited into the Crime Victims Fund (CVF). 42 U.S.C. 10601(b)(1). Criminal fines imposed for Title 26 offenses are not exempt from this requirement. The fines imposed in criminal tax cases that are deposited into the CVF are not available to the Secretary to pay awards under section 7623. As criminal fines deposited in the CVF are not available to pay awards, the final regulations do not include criminal fines in the definition of collected proceeds. However, restitution ordered by a court to the IRS is collected as a tax by the IRS and, therefore, is encompassed in the definition of collected proceeds.

Several commenters suggested that whistleblowers should be rewarded for the prevention of future tax avoidance based on the whistleblower's information. Whether the IRS has the authority to make such an award under section 7623 and, if so, how the amount of the award would be determined and paid, is beyond the scope of this regulation. The final regulations do not address awards relating to the prevention of future tax avoidance.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of this regulation is Kirsten N. Witter, Office of the Associate Chief Counsel (General Legal Services).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.7623–1 also issued under 26 U.S.C. 7623. * * *

■ **Par. 2.** Section 301.7623–1 is amended by revising the section heading, and paragraphs (a) and (g) to read as follows:

§ 301.7623–1 Rewards and awards for information relating to violations of internal revenue laws.

(a) *In general*—(1) *Rewards and awards.* When information that has been provided to the Internal Revenue Service results in the detection of underpayments of tax or the detection and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same, the IRS may approve a reward under section 7623(a) in a suitable amount from the proceeds of amounts collected in cases when rewards are not otherwise provided by law, or shall determine an award under section 7623(b) from collected proceeds.

(2) *Proceeds of amounts collected and collected proceeds.* For purposes of section 7623 and this section, both proceeds of amounts collected and collected proceeds include: Tax, penalties, interest, additions to tax, and additional amounts collected by reason of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

* * * * *

(g) *Effective/applicability date.* Paragraph (a) is effective on February 22, 2012. This section is applicable with respect to rewards paid after January 29, 1997, except the rules of paragraph (a) of this section apply with respect to rewards and awards paid after February 22, 2012.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: February 14, 2012.

Emily S. McMahon,

(Acting) Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–3989 Filed 2–21–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0081]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the bridge owner to conduct maintenance of the bridge. This deviation allows the bridge to remain in the closed-to-navigation position during the maintenance period.

DATES: This deviation is effective from 7 a.m. on March 5, 2012 through 7 p.m. on March 16, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0081 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0081 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation (Caltrans) has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7 a.m. on March 5, 2012 through 7 p.m. on March 9, 2012 and from 7 a.m. on March 12, 2012 through 7 p.m. on March 16, 2012 to allow Caltrans to replace the lifting cables on the drawspan. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 6, 2012.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2012–4016 Filed 2–21–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0049]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the 8th Annual Shamrock Half Marathon. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 7:30 a.m. to 1:05 p.m. on March 11, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0049 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0049 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7:30 a.m. to 1:05 p.m. on March 11, 2012 to allow the community to participate in the 8th Annual Shamrock Half Marathon. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened with 15 minutes advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 3, 2012.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2012–4019 Filed 2–21–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0086]

Drawbridge Operation Regulations; The Gut, South Bristol, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Gut Bridge, mile 0.2, across The Gut at South Bristol, Maine. The deviation is necessary to facilitate subsurface test boring at the bridge. This deviation will allow the bridge to remain in the closed position for two days.

DATES: This deviation is effective from 7 a.m. on February 29, 2012 through 7 p.m. on March 1, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0086 and are available online at *www.regulations.gov*, inserting USCG–2012–0086 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. John W. McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager,

Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Gut Bridge, across The Gut, mile 0.2, has a vertical clearance in the closed position of 3 feet at mean high water and 12 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

The waterway supports recreational vessels of various sizes. There is an alternate route for vessels to use; however, vessels that can pass under the bridge in the closed position may do so at all times.

The owner of the bridge, Maine Department of Transportation, requested a temporary deviation to facilitate subsurface test borings at the bridge.

Under this temporary deviation the Gut Bridge may remain in the closed position from 7 a.m. through 7 p.m. on February 29, 2012 and also on March 1, 2012.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 10, 2012.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2012–4020 Filed 2–21–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0512; FRL–9633–5]

RIN 2060–AR09

Greenhouse Gas Reporting Program: Electronics Manufacturing: Revisions to Heat Transfer Fluid Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing technical revisions to the electronics manufacturing source category of the Greenhouse Gas Reporting Rule related to fluorinated heat transfer fluids. More specifically, EPA is finalizing amendments to the definition of fluorinated heat transfer fluids and to the provisions to estimate and report emissions from fluorinated heat transfer fluids. This final rule is narrow in scope and does not address any other changes related to the electronics manufacturing source category.

DATES: This rule will be effective on March 23, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0512. All documents in the docket are listed in the *http://www.regulations.gov* index.

Although listed in the index, some information may not be publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available in hard copy only. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA's Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov*. For technical information and implementation materials, please go to the Web site *http://www.epa.gov/climatechange/emissions/subpart/i.html*. To submit a question, select "Rule Help Center," followed by "Contact Us."

Worldwide Web (WWW). In addition to being available in Docket ID No. EPA–HQ–OAR–2011–0512, following the Administrator's signature, an electronic copy of this final rule will also be available through the WWW on the EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). These amended regulations could affect owners or operators of certain electronic manufacturing facilities. Regulated categories and entities may include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Source category	NAICS	Examples of affected facilities
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	Liquid Crystal Display (LCD) unit screens manufacturing facilities.
	334419	Micro-electro-mechanical systems (MEMS) manufacturing facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Table 1 of this preamble lists the types of facilities of which the EPA is aware could be potentially affected by the reporting requirements. Other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A and 40 CFR part 98, subpart I. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by April 23, 2012. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during

judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for the EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note that under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA Clean Air Act
CARB California Air Resources Board
CBI confidential business information
CFR Code of Federal Regulations
CO_2 carbon dioxide
CO_2e CO_2-equivalent
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
GHGRP Greenhouse Gas Reporting Program
GWP global warming potential
HTF heat transfer fluid
ICR information collection request
mm Hg millimeters of mercury
MSDS Material Safety Data Sheets
$mtCO_2e$ metric tons CO_2-equivalent
N_2O nitrous oxide
NAICS North American Industry Classification System
NF_3 nitrogen trifluoride
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
QA/QC quality assurance/quality control
RFA Regulatory Flexibility Act
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement and Fairness Act
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code

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K. Congressional Review Act

I. Background

A. Organization of This Preamble

This preamble consists of four sections. The first section provides a brief history of 40 CFR part 98, subpart I (hereinafter referred to as "subpart I").

The second section of this preamble summarizes the revisions made to specific requirements for subpart I being incorporated into 40 CFR part 98 (hereinafter referred to as "Part 98") by this action and the EPA's rationale for those changes. The amendments finalized in this action reflect the changes to subpart I proposed on September 9, 2011 (76 FR 56010), with some additional clarifications. This section also presents a summary of, and EPA's responses to, the major public comments submitted on the proposed rule amendments, and significant changes, if any, made since proposal in response to those comments.

The third section of this preamble provides a discussion regarding the economic impacts of this final rule. Finally, the last section discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background on the Final Rule

This action finalizes amendments to provisions in 40 CFR part 98, subpart I. The EPA published subpart I: Electronics Manufacturing of the Greenhouse Gas Reporting Program (GHGRP) on December 1, 2010 (75 FR 74774) in the **Federal Register.** Subpart I of the GHGRP requires monitoring and reporting of GHG emissions from electronics manufacturing facilities that have yearly emissions equal to or greater than 25,000 $mtCO_2e$.

Following the publication of subpart I in the **Federal Register,** 3M Company (3M) sought EPA reconsideration of the final rule requirements for reporting fluorinated heat transfer fluids (HTFs). Subsequently, EPA published a proposal to amend provisions in subpart I related to calculating and reporting fluorinated HTFs to reflect the agency's intent to require reporting of all fluorocarbons (except for ozone depleting substances regulated under EPA's Stratospheric Protection Regulations at 40 CFR part 82) that can enter the atmosphere under the conditions in which fluorinated HTFs are used in the electronics manufacturing industry.

The proposal was published on September 9, 2011 (76 FR 56010). The public comment period for the proposed rule amendments initially was scheduled to end on October 11, 2011. The EPA received a request to extend the public comment period and published a notice in the **Federal Register** on October 4, 2011 (76 FR 61293) extending the public comment period to October 24, 2011.

In this action, the EPA is finalizing amendments to provisions in subpart I that were proposed in the September 9, 2011 action with some additional clarifications. Responses to comments submitted on the proposed amendments can be found in Section II of this preamble. Note that the agency is not requiring reports filed in September 2012 for reporting year 2011 to cover emissions of newly included fluorinated HTFs.

C. Legal Authority

The EPA is promulgating these rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114.

As stated in the preamble to the 2009 final Greenhouse Gas Reporting Rule (74 FR 56260, October 30, 2009), CAA section 114 provides the EPA broad authority to require the information mandated by Part 98 because such data would inform and are relevant to the EPA's obligation to carry out a wide

variety of CAA provisions. As discussed in the preamble to the initial proposal (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of process or control equipment, and persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about the EPA's legal authority, see the preambles to the proposed and final rule, and related Response to Comments Documents.

D. How Confidential Business Information Determinations and the Deferral of Inputs to Emission Equations Are Affected by Today's Action

The EPA finalized several rulemakings in 2011 in response to concerns related to the reporting and publication of information that may be considered CBI.

On May 26, 2011, the EPA promulgated confidentiality determinations for certain data elements required to be reported under Part 98 and finalized amendments to the Special Rules Governing Certain Information Obtained Under the Clean Air Act, which authorizes the EPA to release or withhold as confidential reported data according to the confidentiality determinations for such data without taking further procedural steps (76 FR 30782, hereinafter referred to as the "May 26, 2011 Final CBI Rule").

On August 25, 2011, the EPA published a final rule that deferred the reporting deadline for data elements that are used by direct emitter reporters, including those under subpart I, as inputs to emission equations under the Mandatory Greenhouse Gas Reporting Rule (76 FR 53057). In that final rule, the EPA deferred the deadline for reporting subpart I inputs to emission equations based on the 2010 final rules for 40 CFR part 98, subpart I (75 FR 74774, December 1, 2010). With respect to the subject of today's rule, emissions of fluorinated HTFs, the EPA deferred the deadline for reporting inputs to the fluorinated HTF mass balance equation (Equation I–16) as required in 40 CFR 98.95(r) until March 31, 2015 and those elements have not changed as a result of today's final rule.

The May 26, 2011 Final CBI Rule only addressed reporting of data elements in 34 subparts that were determined not to be inputs to emission equations and, therefore, were not proposed to have their reporting deadline deferred. Furthermore, that rule also did not make confidentiality determinations for eight subparts, including subpart I, for which reporting requirements were finalized after the publication of the CBI proposals (July 7, 2010 CBI proposal at 75 FR 39094 and July 27, 2010 supplemental proposal at 75 FR 43889).

Instead, on January 10, 2012 (77 FR 1434), the EPA proposed CBI determinations for non-inputs data elements from six of the eight subparts not included in the 2010 rulemakings. CBI determinations for the non-inputs data elements of the two remaining subparts, subpart I and subpart W, are being addressed in separate actions.

As stated above, the EPA intends to propose and finalize CBI determinations for subpart I (both non-inputs and inputs to emissions equations) in separate actions. The agency's goal is to finalize CBI determinations for the non-inputs before the deadline for reporting 2011 data (September 28, 2012).

With respect to the two new subpart I reporting requirements finalized today (40 CFR 98.96(u) and (v)) discussed in detail in Section II.A of this preamble, these are not inputs to emissions equations and EPA is planning to finalize CBI determinations for these two data elements in separate actions prior to the deadline for reporting these data elements to the EPA. For more information generally on the various actions related to treatment of data that may be considered CBI, please see the GHGRP Web site dedicated to CBI at *http://www.epa.gov/climatechange/emissions/CBI.html.*

II. Overview of Amendments to the Electronics Manufacturing Source Category

A. Summary of Final Amendments to the Electronics Manufacturing Source Category

In this action, the EPA is finalizing amendments to subpart I regarding the calculation and reporting of emissions of fluorinated HTFs. More specifically, the EPA is finalizing the changes to the definition of fluorinated HTFs and to the provisions to estimate and report emissions of fluorinated HTFs that were proposed on September 9, 2011 (76 FR 56010), with the following five refinements.

- In the definition of fluorinated HTFs, the EPA is specifically excluding select applications of fluorinated chemicals. These applications include their uses as lubricants (such as greases and oils), and surfactants.
- Where a fluorinated chemical is used in both HTF and non-HTF applications, the EPA is providing flexibility to allow facilities to estimate either that chemical's emissions from all applications or its emissions from only the applications included in the fluorinated HTF definition.
- To accommodate the change in the definition of fluorinated HTF, the EPA is amending 40 CFR 98.94(h)(3), which requires facilities to ensure that the inventory of fluorinated HTFs at the beginning of the reporting year is identical to the inventory recorded at the end of the previous reporting year. Specifically, EPA is adding an exception to this requirement to allow for differences between the beginning and end-of-year inventories that are solely attributable to the change in the scope of subpart I. In addition, EPA is clarifying that 40 CFR 98.94(h) applies to each fluorinated HTF just as it applies to each fluorinated GHG and nitrous oxide (N_2O).
- The EPA is adding two new reporting requirements to reflect flexibilities being added to the rule that are described above.

a. First, related to the flexibility provision discussed in the second bulleted paragraph above, the EPA is requiring facilities to report to the EPA whether they estimated and reported fluorinated HTF emissions from all applications or only from those covered by the definition of fluorinated HTFs (see 40 CFR 98.96(u)).

b. Second, for reporting year 2012 only, the EPA is requiring that facilities report the date on which monitoring of the newly included fluorinated HTFs began (see 40 CFR 98.96(v)). As discussed in the paragraphs below, for 2012, facilities will have the option to begin accounting for the newly included fluorinated HTFs on the first day of the year, January 1, 2012, or on the date that the final rule becomes effective.

The EPA is requiring facilities to estimate emissions of newly included fluorinated HTFs beginning in 2012 and to file reports that cover such emissions beginning in 2013 for the 2012 reporting year. The Agency is not requiring reports filed in September 2012 for reporting year 2011 to cover emissions of newly included fluorinated HTFs. For reporting year 2012 only, the EPA is allowing facilities to determine whether they wish to begin to estimate emissions of newly included fluorinated HTFs on January 1, 2012 or March 23, 2012. In other words, facilities may calculate and report emissions of newly included fluorinated HTFs either for the time-period of January 1, 2012 through December 31, 2012 or for the time period of March 23, 2012 through December 31, 2012. Beginning in 2013, facilities will be required to calculate and report emissions from all fluorinated HTFs for the entirety of the reporting year (i.e., January 1 through December 31).

The EPA does not expect that facilities will have any difficulty beginning to estimate emissions of newly included fluorinated HTFs on either January 1, 2012 or March 23, 2012. In summary, as finalized in the

December 2010 final rule (75 FR 74774), the subpart I provisions for estimating and reporting emissions of fluorinated HTFs require a simple mass balance methodology where the facility is required to track inventories at the beginning and end of the year, acquisitions and disbursements of fluorinated HTFs, and the nameplate capacity of only newly installed and removed equipment containing fluorinated HTFs.

B. Summary of Comments and Responses Submitted on the Electronics Manufacturing Source Category

The EPA received comments from two entities. In general, one commenter supported the EPA's proposed changes to the definition of fluorinated HTFs, and the other commenter, while not objecting in principle to including high global warming potential (GWP) HTFs in subpart I irrespective of their vapor pressure, argued that the proposed definition of fluorinated HTFs is overly broad and suggested changes to narrow it. The second commenter also had a number of comments requesting that the set of fluorinated chemicals and applications included in Part 98 be narrowed. As discussed below, EPA has concluded that these broader comments are outside the scope of this rule. However, it is important to note that the Agency is open to considering any of these broader issues, as appropriate, in future actions.

The Agency further notes that many of the chemicals for which exemptions were requested are likely excluded from Part 98, because they are used in applications that fall outside the definition of fluorinated heat transfer fluid or fluorinated GHG. The 1 millimeter mercury (mm Hg) vapor pressure at 25 °C limit remains in effect for fluorinated chemicals that are used in applications outside of the definition of fluorinated heat transfer fluid. Therefore, the EPA concluded the change to the definition of heat transfer fluid defined in this rule is sufficient to provide the necessary exclusions. All comments are summarized and addressed in more detail below.

Definition of Heat Transfer Fluids

Comment: One commenter supported the proposed changes to subpart I that amended the definition of HTFs. The commenter stated that the changes will result in more comprehensive reporting of HTFs, including those with high GWP.

Another commenter asserted that the EPA's proposed definition for HTFs is overly broad and argued that it includes applications that do not involve heat transfer, such as cleaning processes. The commenter stated that the proposed language fails to distinguish between *de minimis* sources of emissions within a facility and between production and non-production operations. The commenter asserted that tracking substances that are not used in "heat transfer" applications would be extremely burdensome and that given their design and intended use, the materials are expected to generate insignificant emissions. The commenter argued that eliminating the vapor pressure cutoff and finalizing a definition of HTFs that includes applications that do not involve "heat transfer" would exacerbate these issues. The commenter suggested several revisions to the proposed definitions of HTF and fluorinated GHG to narrow the scope of those definitions.

First, the commenter, in response to EPA's request for comment in this issue, strongly supported the exclusion of greases, oils, and lubricants from the definition of HTFs, and suggested the definition be modified to explicitly exclude these applications. The commenter agreed with the EPA's statement that these "applications do not typically occur at temperatures at which lubricants would volatilize," and further argued that for greases, oils, and lubricants to serve their primary purpose, it is necessary that they not volatilize. In addition, the commenter stated that: (1) These materials are used within systems that must be designed to prevent leaks; (2) greases, oils, and lubricants are essential for equipment functioning; and (3) the loss of a lubricant may result in equipment damage. The commenter concluded that these substances are unlikely to be emitted into the atmosphere in the semiconductor manufacturing process and argued they are used in small quantities.

This commenter also supported explicitly excluding fluorinated surfactants from subpart I HTF consumption and emission reporting requirements. The commenter noted that fluorinated surfactants may be added to lithography chemical formulations and aqueous polishing slurries, among other things. The commenter explained that fluorinated surfactants are added in minimal quantities (concentrations are typically around a fraction of a percent) and that they are designed to remain in solution to be effective. For this reason, the commenter argued, the potential for surfactant emissions is very limited. The commenter also stated that the identity of surfactants may be highly proprietary and in some cases not disclosed on Material Safety Data Sheets (MSDS). The commenter provided several MSDS to support their suggested explicit exclusions of oils, greases, lubricants, and surfactants.

To address the issues mentioned above, the second commenter recommended that the definition of HTFs and fluorinated GHGs be modified. Specifically, the commenter suggested that EPA only include the concept of substances used "solely or primarily to transfer heat by radiation, conduction, convection or a combination of these methods" in the definition of HTFs. The commenter also suggested that the definition of fluorinated GHGs in subpart A explicitly exclude greases, oils, lubricants, polymers, and surfactants whose primary purpose is not heat transfer. The commenter concluded that these changes would clarify the EPA's intent not to encompass other, non-heat transfer fluorinated materials.

Response: The EPA agrees with the first commenter that the revised definition of fluorinated HTFs will result in more comprehensive reporting of high-GWP HTF emissions, as the EPA originally intended. With respect to the comment that the EPA should exclude specific applications from the definition, the EPA acknowledges that it may be helpful to explicitly exclude some applications from the definition of fluorinated HTFs that it did not intend to capture; these applications include uses as lubricants (such as greases and oils) and surfactants. While the EPA continues to interpret the proposed definition of fluorinated HTFs to already exclude these applications (because it did not specifically list them), the agency has determined that explicitly excluding them may further clarify the definition. The EPA agrees with the commenter that these applications typically occur under conditions where the substances would not volatize and would not result in atmospheric emissions. The EPA concluded the change to the definition of heat transfer fluid is sufficient to provide the necessary exclusions and ensure that chemicals such as lubricants and embedded solid polymers are not covered.

The EPA is not explicitly excluding "polymers" because it is not specifically an application. As explained above, in response to the comments, EPA added exclusions to the definition of HTF based on applications. The EPA acknowledges that, in many cases, fluorocarbon polymers are solids at room temperature and will not meet the definition of a fluorinated HTF. Polymers with vapor pressures well

below 1 mm Hg absolute at 25 °C are unsuitable for use in the applications included in the definition of fluorinated HTF (e.g., because its melting point or viscosity is too high). Moreover, it will not otherwise be subject to subpart I because, with a vapor pressure below 1 mm Hg absolute at 25 °C, it will not meet the definition of a fluorinated GHG. On the other hand, if a polymer is used in applications included in the definition of fluorinated HTF, it is likely to be used under conditions (e.g., high temperatures) where emissions may occur. The definition of fluorinated HTF will appropriately include the polymer under these circumstances.

In this final rule, the EPA is finalizing the following definition of fluorinated heat transfer fluids: "*Fluorinated heat transfer fluids* means fluorinated GHGs used for temperature control, device testing, cleaning substrate surfaces and other parts, and soldering in certain types of electronics manufacturing production processes. Fluorinated heat transfer fluids do not include fluorinated GHGs used as lubricants or surfactants. For fluorinated heat transfer fluids under this subpart I, the lower vapor pressure limit of 1 mm Hg in absolute at 25 °C in the definition of Fluorinated greenhouse gas in 40 CFR 98.6 shall not apply. Fluorinated heat transfer fluids used in the electronics manufacturing sector include, but are not limited to, perfluoropolyethers, perfluoroalkanes, perfluoroethers, tertiary perfluoroamines, and perfluorocyclic ethers." The EPA believes that this final definition of fluorinated HTFs will ensure that all fluorinated HTFs used in electronics manufacturing and susceptible to being emitted in the atmosphere are appropriately monitored and reported under subpart I, and that the EPA will receive valuable emissions information on the full range of volatile fluorinated HTFs used in electronics manufacturing.

While the EPA agrees that it is appropriate to modify the definition of fluorinated HTFs in subpart I to explicitly exclude, lubricants (such as greases and oils), and surfactants, the EPA does not agree with the commenter's suggestion to modify both the definition of fluorinated HTFs and the definition of fluorinated GHGs in 40 CFR part 98, subpart A. Making changes to the general definition of fluorinated GHGs in 40 CFR part 98, subpart A for purposes of subpart I only is not appropriate, because this definition applies to multiple other subparts. Further, such a modification is outside the scope of this rulemaking because the EPA did not propose any changes to the definition of fluorinated GHGs. However, the Agency notes that many of the chemicals for which exemptions were requested are likely excluded from Part 98 because they are used in applications that fall outside the definition of fluorinated heat transfer fluid. Moreover, the definition of fluorinated GHG retains the 1 mm Hg at 25 °C vapor pressure limit and these chemicals generally have a vapor pressure below that limit.

The EPA also does not agree with the suggestion to remove the clause, "device testing, cleaning substrate surfaces and other parts, and soldering," from the definition. All of these applications were included in the December 1, 2010 final rule (75 FR 74775). In the proposed rule, the EPA did not intend to modify the set of applications included in the definition of fluorinated HTFs, but rather to clarify the definition to cover all fluorocarbons (except for ozone depleting substances regulated under the EPA's Stratospheric Protection Regulations at 40 CFR part 82) that can enter the atmosphere under the conditions in which fluorinated HTFs are used in the electronics manufacturing industry.

Similarly, the EPA is not revising the definition of fluorinated HTFs to limit it to substances used "solely or primarily to transfer heat by radiation, conduction, convection or a combination of these methods." This definition would not include all of the applications in electronics manufacturing in which fluorocarbons are used at high temperatures and can therefore enter the atmosphere. The EPA believes that by explicitly excluding certain items from the definition we can address the commenter's primary concerns without restructuring the definition.

Burden

Comment: One commenter expressed concern that unless the EPA made its recommended changes (i.e., modifications to the scope of Part 98 to explicitly exclude certain substances and related provisions), the burden associated with the monitoring, reporting, recordkeeping, and quality assurance and quality control (QA/QC) requirements under subpart I would be unjustified (40 CFR 98.92(a)(6), 98.93(s), 98.94(h), and 98.96(g)). The commenter expressed the opinion that materials covered by the HTF provisions are expected to generate insignificant emissions.

Response: With respect to the commenter's concern about the burden associated with modifying the fluorinated HTF definition, the only change in burden relative to the current subpart I requirements is associated with the inclusion of fluorinated HTFs whose vapor pressures fall below 1 mm Hg absolute at 25 °C. This action aligns the reporting requirements with the EPA's original intention to include all fluorocarbons that can enter the atmosphere under the conditions in which fluorinated HTFs are used in the electronics manufacturing industry. The set of applications included in the definition (temperature control, device testing, cleaning substrate surfaces and other parts, and soldering in certain types of electronics manufacturing production processes) is the same as in the December 1, 2010 final rule. As the EPA stated in the preamble of the proposed rule, the EPA's burden estimates for the December 2010 final rule were based on reporting of all fluorinated HTFs; therefore the clarifications in this final rule do not impose additional burden on reporters (76 FR 56010, September 9, 2011). In addition, in this final rule, the EPA has included flexibility provisions to reduce burden associated with monitoring and reporting of fluorinated HTF emissions.

The other comments that the commenter provided on burden (i.e., comments not directly related to the definition of fluorinated HTFs or the provisions to calculate and report them) are outside the scope of this rule as the EPA did not propose any changes to those sections.

Flexibility for Reported Fluorinated HTF Emissions

Comment: In response to the EPA's request for comment on whether reporters should be given flexibility under 40 CFR 98.93(h) to report either a chemical's emissions from all applications or its emissions from only the applications included in the HTF definition, one commenter asserted that flexibility is needed. The commenter advocated flexibility to reduce the burden associated with separately quantifying and tracking consumption due to miscellaneous non-HTF applications. The commenter stated that numerous materials used in semiconductor manufacturing may have non-HTF applications, and the burden of identifying and categorizing the different material would be significant.

Response: To provide flexibility, the EPA has finalized provisions to give facilities the option to avoid maintaining a separate supply of the chemical for purposes of tracking fluorinated HTF emissions, as would otherwise be required for the mass-balance calculation. Where a fluorinated chemical is used in both HTF and non-

HTF applications, the EPA is revising provisions in 40 CFR 98.93(h)(1) to allow facilities to estimate and report emissions either from all applications or from only those covered in the definition of "fluorinated heat transfer fluids." The EPA concluded that this flexibility would result in a reduction of burden for all electronics manufacturing facilities. Further, as the EPA stated in the preamble to the proposed rule, the EPA understands that emissions from the non-HTF applications would make up a small fraction of the total. To ensure that the EPA understands whether emissions reported are from all applications of a fluorinated chemical or only from applications specified in the definition of fluorinated HTFs, the EPA is requiring facilities to report which approach they took in estimating emissions (40 CFR 98.94(u)). The EPA has concluded that the burden associated with the data reporting requirement is minimal and is balanced by the flexibility provided.

Reporting Requirements for Newly Included Fluorinated HTFs

Comment: One commenter strongly supported EPA's proposal to apply the requirement to report newly included fluorinated HTFs (i.e., HTFs with a vapor pressure of less than 1 mm Hg absolute at 25 °C) to emissions that occur in 2012 and beyond, but not to 2011 emissions. The commenter asserted that because of the specific exclusion of these HTFs in the December 1, 2010, rule (75 FR 74774), many facilities may not have records available for 2011 to support reporting of emissions.

Response: In this final rule, the EPA is requiring facilities to begin to estimate and report emissions from newly-included fluorinated HTFs (that is, HTFs whose vapor pressures fall below 1 mm Hg absolute at 25 °C) for emissions that occur in 2012. For reporting year 2012, the EPA is allowing facilities to select either the time-period of January 1, 2012 through December 31, 2012 or March 23, 2012 through December 31, 2012. The EPA has concluded that this flexibility will provide facilities sufficient time to comply with the revisions. To ensure that the EPA can ascertain the time period over which reported 2012 emissions occurred, the EPA is requiring that, for 2012 only, facilities report the date selected to begin accounting for the newly included fluorinated HTFs (40 CFR 98.94(v)). Beginning in 2013, facilities will be required to estimate and report emissions from the entire reporting year (e.g., January 1 through December 31).

Other Comments

Comment: One commenter observed that the definition of "fluorinated GHGs" proposed by the California Air Resources Board (CARB) in their proposed GHG reporting rule is consistent with the U.S. EPA definition. The commenter noted that the consistency will help minimize the burden associated with the various reporting requirements. The commenter further encouraged the EPA to work with CARB to establish a consistent definition of HTFs if and when CARB does require reporting of HTFs. Lastly, the commenter also suggested minor edits to the explanation of vapor phase soldering in order to make the EPA's statement from the proposed preamble (September 9, 2011, 76 FR 56010) more technically accurate.

Response: The EPA acknowledges the commenter's suggestion for the EPA to work with CARB to maintain consistency in the definition of fluorinated HTFs. As the EPA stated in the preamble to the GHG Reporting Rule in 2009, "EPA is committed to working with State and regional programs to coordinate implementation of reporting programs, reduce burden on reporters, provide timely access to verified emissions data, establish mechanisms to efficiently share data, and harmonize data systems to the extent possible" (74 FR 56260, October 30, 2009). The EPA also appreciates the commenter's clarifications of the process of vapor phase soldering.

Comment: One commenter provided recommendations to address the burden of reporting obligations for fluorinated materials with *de minimis* emissions of GHGs. The commenter suggested that a *de minimis* threshold for reporting be adopted under subpart I, 40 CFR 98.92(a)(6), 98.93(c), 98.94(h), and 98.96(g), to reduce reporting burden for miscellaneous fluorinated materials. In addition, the commenter suggested that EPA modify subpart I to clarify that 98.92(a)(6) applies only to materials used in manufacturing processes and not for other purposes, such as the operation and maintenance of the facility (e.g., fluorinated surfactant in anti-static floor finish) and facility infrastructure systems (e.g., refrigerants for HVAC).

Response: The comments related to the adoption of a *de minimis* threshold for specific consumption reporting requirements in subpart I that are not related to the definition of fluorinated HTFs (e.g., 40 CFR 98.92(a)(6), 98.93(c), 98.94(h), and 98.96(g)) are outside the scope of this rule because EPA did not propose any changes to those sections regarding reporting thresholds or suggest that a *de minimis* threshold would be adopted.[1]

With respect to the commenter's suggestion to limit the scope of 40 CFR 98.92(a)(6) to materials used in manufacturing processes and not for other purposes, such as the operation and maintenance of the facility and facility infrastructure systems, is also outside the scope of this rule. EPA did not propose to narrow the scope of reporting under subpart I. For this reason, EPA is not taking action at this time regarding the commenter's suggestion. However, in a separate future action, the Agency may consider whether a modification to this reporting requirement is appropriate.

III. Economic Impacts of the Rule

The amendments finalized in this action are intended to clarify the intent of EPA to include all fluorocarbons that can enter the atmosphere under the conditions in which fluorinated HTFs are used in the electronics manufacturing industry. Overall, these revisions are not expected to have a significant effect on the economy and an economic impact analysis is not required.

IV. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The final amendments to subpart I will carry out the agency's intent to require reporting of emissions of all fluorocarbons used as fluorinated HTFs in the electronics manufacturing industry. This was the intent of the subpart I reporting requirements for fluorinated HTFs finalized on December 1, 2010 (75 FR 74774), and this intent was reflected in the Information

[1] On the topic of de minimis in general, EPA directs the commenter to the Final MRR where EPA determined that de minimis provisions were not necessary because they would compromise the quality and usefulness of the data collected (74 FR 56260, October 2009). For additional background on EPA's decisions to exclude de minimis provisions, please see response to comments in the preamble to the Final MRR (74 FR 56278–56279, October 30, 2009) and also "Reporting Methods for Small Emission Points (De Minimis Reporting)" (EPA–HQ–OAR–2008–0508–0048).

Collection Request (ICR) prepared during that rulemaking. Thus, the final amendments will not increase the EPA or industry burden beyond that estimated in the ICR.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations and 40 CFR part 98, subpart I (75 FR 74774, December 1, 2010), under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0650. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Burden is defined at 5 CFR 1320.3(b).

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.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are facilities included in NAICS codes for Semiconductor and Related Device Manufacturing (334413) and Other Computer Peripheral Equipment Manufacturing (334119). As shown in Tables 5–13 and 5–14 of the Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Final Rule (74 FR 56260, October 30, 2009) available in docket number EPA–HQ–OAR–2008–0508, the average ratio of annualized reporting program costs to receipts of establishments owned by model small enterprises was less than 1 percent for industries presumed likely to have small businesses covered by the reporting program.

Further, the EPA has clarified its intent and revised specific provisions to reflect what must be reported. While these revisions expand the scope of fluorocarbons that must be reported, EPA's burden estimates were based reporting of all fluorinated HTFs; therefore, the clarification of intent does not impose additional burden on reporters. We have therefore concluded that this action will not impose additional regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

These final rule amendments do not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the proposed rule amendments were not subject to the requirements of section 202 and 205 of the UMRA. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Few, if any, state or local government facilities would be affected by the provisions in this final rule. This regulation also does not limit the power of states or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). During the finalization of subpart I, the EPA undertook the necessary steps to determine the impact of those rules on tribal entities and provided supporting documentation demonstrating the results of the agency's analyses. The rule amendments in this action do not impose any significant changes to the current reporting requirements contained 40 CFR part 98, subpart I. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to

provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This rule does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on March 23, 2012.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: February 10, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 98—[AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

■ 2. Section 98.90 is amended by revising paragraph (a)(5) to read as follows:

§ 98.90 Definition of the source category.

* * * * *

(a) * * *

(5) Any electronics manufacturing production process in which fluorinated heat transfer fluids are used to cool process equipment, to control temperature during device testing, to clean substrate surfaces and other parts, and for soldering (e.g., vapor phase reflow).

■ 3. Section 98.91 is amended by revising the definition of "δ" in Equation I–4 in paragraph (a)(4) to read as follows:

§ 98.91 Reporting threshold.

* * * * *

(a) * * *

(4) * * *

δ = Factor accounting for fluorinated heat transfer fluid emissions, estimated as 10 percent of total annual production process emissions at a semiconductor facility. Set equal to 1.1 when Equation I–4 of this subpart is used to calculate total annual production process emissions from semiconductor manufacturing. Set equal to 1 when Equation I–4 of this subpart is used to calculate total annual production process emissions from MEMS, LCD, or PV manufacturing.

* * * * *

■ 4. Section 98.92 is amended by revising paragraph (a) introductory text and paragraph (a)(5) to read as follows:

§ 98.92 GHGs to report.

(a) You must report emissions of fluorinated GHGs (as defined in § 98.6), N_2O, and fluorinated heat transfer fluids (as defined in § 98.98). The fluorinated GHGs and fluorinated heat transfer fluids that are emitted from electronics manufacturing production processes include, but are not limited to, those listed in Table I–2 to this subpart. You must individually report, as appropriate:

* * * * *

(5) Emissions of fluorinated heat transfer fluids.

* * * * *

■ 5. Section 98.93 is amended by:

■ a. Revising paragraph (h) introductory text.

■ b. Revising the definition of "EH_i" in Equation I–16 in paragraph (h).

■ c. Revising the definition of "i" in Equation I–16 in paragraph (h).

■ d. Adding paragraph (h)(1).

■ e. Adding paragraph (h)(2).

§ 98.93 Calculating GHG emissions.

* * * * *

(h) If you use fluorinated heat transfer fluids, you must report the annual emissions of fluorinated heat transfer fluids using the mass balance approach described in Equation I–16 of this subpart.

* * * * *

EH_i = Emissions of fluorinated heat transfer fluid i, (metric tons/year).

* * * * *

i = Fluorinated heat transfer fluid.

* * * * *

(1) If you use a fluorinated chemical both as a fluorinated heat transfer fluid and in other applications, you may calculate and report either emissions from all applications or from only those specified in the definition of *fluorinated heat transfer fluids in § 98.98*.

(2) For the 2012 reporting year, you may calculate and report emissions of fluorinated heat transfer fluids whose vapor pressure falls below 1 mm Hg absolute at 25 °C either for the time period January 1, 2012 through December 31, 2012 or for the time period March 23, 2012 through December 31, 2012. The term "reporting year" in Equation I–16 shall be interpreted to be consistent with the time period selected. In addition, for the 2012 reporting year I_{iB} is not required to be the same as the inventory at the end of 2011 if the inventory at the end of 2011 excluded fluorinated heat transfer fluids whose vapor pressure falls below 1 mm Hg absolute at 25 °C. Starting in the reporting year 2013, you must calculate and report emissions of all fluorinated heat transfer fluids for the entirety of the reporting year.

■ 6. Section 98.94 is amended by revising paragraph (h) introductory text and paragraph (h)(3) to read as follows:

§ 98.94 Monitoring and QA/QC requirements.

* * * * *

(h) You must adhere to the QA/QC procedures of this paragraph (h) when

calculating annual gas consumption for each fluorinated GHG and N_2O used at your facility and emissions from the use of each fluorinated heat transfer fluid.

* * * * *

(3) Ensure that the inventory at the beginning of one reporting year is identical to the inventory reported at the end of the previous reporting year. This requirement does not apply to the end-of-the-year inventory of fluorinated heat transfer fluids in 2011 and the beginning-of-the-year inventory of the same in 2012.

* * * * *

■ 7. Section 98.95 is amended by revising paragraph (b) to read as follows:

§ 98.95 Procedures for estimating missing data.

* * * * *

(b) If you use fluorinated heat transfer fluids at your facility and are missing data for one or more of the parameters in Equation I–16 of this subpart, you must estimate fluorinated heat transfer fluid emissions using the arithmetic average of the emission rates for the reporting year immediately preceding the period of missing data and the months immediately following the period of missing data. Alternatively, you may estimate missing information using records from the fluorinated heat transfer fluid supplier. You must document the method used and values used for all missing data values.

■ 8. Section 98.96 is amended by:
■ a. Revising paragraph (c)(4).
■ b. Revising paragraph (r).
■ c. Revising paragraph (s).
■ d. Adding paragraph (u).
■ e. Adding paragraph (v).

§ 98.96 Data reporting requirements.

* * * * *

(c) * * *

(4) Each fluorinated heat transfer fluid emitted as calculated in Equation 1–16 of this subpart.

* * * * * *

(r) For fluorinated heat transfer fluid emissions, inputs to the fluorinated heat transfer fluid mass balance equation, Equation I–16 of this subpart, for each fluorinated heat transfer fluid used.

(s) Where missing data procedures were used to estimate inputs into the fluorinated heat transfer fluid mass balance equation under § 98.95(b), the number of times missing data procedures were followed in the reporting year, the method used to estimate the missing data, and the estimates of those data.

* * * * *

(u) For each fluorinated heat transfer fluid used, whether the emission estimate includes emissions from all applications or from only the applications specified in the definition of fluorinated heat transfer fluids in § 98.98.

(v) For reporting year 2012 only, the date on which you began monitoring emissions of fluorinated heat transfer fluids whose vapor pressure falls below 1 mm Hg absolute at 25 °C. This is either January 1, 2012 or March 23, 2012.

■ 9. Section 98.98 is amended by removing the definition of "Heat transfer fluids" and adding the definition of "Fluorinated heat transfer fluids" in alphabetical order to read as follows:

§ 98.98 Definitions.

* * * * *

Fluorinated heat transfer fluids means fluorinated GHGs used for temperature control, device testing, cleaning substrate surfaces and other parts, and soldering in certain types of electronics manufacturing production processes. Fluorinated heat transfer fluids do not include fluorinated GHGs used as lubricants or surfactants. For fluorinated heat transfer fluids under this subpart I, the lower vapor pressure limit of 1 mm Hg in absolute at 25 °C in the definition of *Fluorinated greenhouse gas* in § 98.6 shall not apply. Fluorinated heat transfer fluids used in the electronics manufacturing sector include, but are not limited to, perfluoropolyethers, perfluoroalkanes, perfluoroethers, tertiary perfluoroamines, and perfluorocyclic ethers.

* * * * *

■ 10. Table I–2 to Subpart I is revised to read as follows:

TABLE I–2 TO SUBPART I OF PART 98—EXAMPLES OF FLUORINATED GHGS AND FLUORINATED HEAT TRANSFER FLUIDS USED BY THE ELECTRONICS INDUSTRY

Product type	Fluorinated GHGs and fluorinated heat transfer fluids used during manufacture
Electronics	CF_4, C_2F_6, C_3F_8, c-C_4F_8, c-C_4F_8O, C_4F_6, C_5F_8, CHF_3, CH_2F_2, NF_3, SF_6, and fluorinated HTFs (CF_3-(O-$CF(CF_3)$-$CF_2)_n$-(O-$CF_2)_m$-O-CF_3, C_nF_{2n+2}, $C_nF_{2n+1}(O)C_mF_{2m+1}$, $C_nF_{2n}O$, $(C_nF_{2n+1})_{3N}$).

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0168; FRL–9333–4]

Metaflumizone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of metaflumizone in or on citrus fruit, tree nuts, almond hulls; and grape. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 22, 2012. Objections and requests for hearings must be received on or before April 23, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0168. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Julie Chao, Registration Division (7505P), Office of Pesticide Programs,

Environmental Protection Agency. 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8735; email address: *chao.julie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0168 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 23, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2008–0168, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of August 10, 2011 (76 FR 49396) (FRL–8882–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7260) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide metaflumizone, in or on: Fruit, citrus, group 10 at 0.04 ppm; nut, tree, group 14 at 0.04 ppm; almond, hulls at 0.04 ppm; and grape at 0.04 ppm. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for metaflumizone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with metaflumizone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Hematotoxicity (toxicity of the blood) was the primary toxic effect of concern following subchronic or chronic oral exposures to metaflumizone. Splenic extramedullary hematopoiesis, increased hemosiderin, and anemia were the most common hematotoxic effects reported after repeated oral dosing with metaflumizone. The postulated pesticidal mode of action of metaflumizone involves inhibition of sodium channels in target insect species; however, in mammals (rats), there were only clinical signs of neurotoxicity (i.e., piloerection and body temperature variations) with no neuropathology in the presence of systemic toxicity (e.g., recumbency and poor general state) following acute or repeated exposures. Similarly, several immune system organs seem to be affected following metaflumizone administration via the oral, dermal, and inhalation routes (e.g., the presence of macrophages in the thymus, lymphocyte necrosis in the mesenteric lymph nodes,

and diffuse atrophy of the mandibular); however, there was no evidence of any functional deficits at the highest dose tested (HDT) in a recently submitted and reviewed guideline immunotoxicity study. Therefore, the clinical neurotoxicity signs and the effects on the immune system organs following metaflumizone administration are likely to be secondary to the hematotoxic effects. Metaflumizone induced an increased incidence of a missing subclavian artery at a relatively high dose that also caused severe maternal toxicity (e.g., late term abortions) in the developmental toxicity study in rabbits. There was no evidence (quantitative or qualitative) of increased susceptibility following *in utero* exposures to rats or rabbit and following pre- and post natal exposures. There was no evidence that metaflumizone is genotoxic and carcinogenicity studies with mice and rabbits were negative.

Specific information on the studies received and the nature of the adverse effects caused by metaflumizone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document entitled "Metaflumizone. Revised Human-Health Risk Assessment Associated with a Section 3 Registration for a Fire Ant Bait for Application to Citrus, Tree Nuts, and Grape, and a new Section 3 Registration for a Fly Bait for Application around Industrial, Commercial, Agricultural, and Recreational Facilities/Structures and Premises" in docket ID number EPA–HQ–OPP–2008–0168.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for metaflumizone used for human risk assessment is provided in this unit:

i. *Acute dietary endpoint (general population including infants and children).* An acute dietary endpoint was not established for this population group since an endpoint of concern (effect) attributable to a single dose was not identified in the database. Studies considered for this endpoint included the acute neurotoxicity study in which no toxicity was observed at any dose including the HDT, which is the limit dose (1,000 milligrams/kilograms/day (mg/kg/day)).

ii. *Acute dietary endpoint (females 13–49 years old).* This endpoint was established based on a developmental effect observed in the rabbit developmental toxicity study that can be potentially due to a single dose of metaflumizone. This effect consisted of an increased incidence of an absent subclavian artery in the offspring at the LOAEL of 300 mg/kg body/weight/day (bw/day) metaflumizone (NOAEL = 100 mg/kg bw/day). The rat developmental toxicity study was also considered for this endpoint; however, no developmental effects were observed in this study at the HDT of 120 mg/kg bw/day metaflumizone. A combined uncertainty factor of 300 was applied to account for interspecies (10X) and intraspecies (10X) extrapolation and a Food Quality Protection Act (FQPA) safety factor of 3X. Thus, the acute population adjusted dose (aPAD) for females 13–49 years old is estimated to be 0.33 mg/kg bw/day.

iii. *Chronic dietary endpoint.* This endpoint was established based on the systemic toxicity observed in the chronic toxicity study with dogs. At the LOAEL of 30 mg/kg bw/day (NOAEL = 12 mg/kg bw/day), the effects consisted of reduced general health condition, slight to severe ataxia, recumbency, and severe salivation, slight decreases in mean corpuscular hemoglobin concentration and total hemoglobin, leading to increased plasma bilirubin, increased urinary urobilinogen, and increased hemosiderin in the liver. A combined uncertainty factor of 300 was applied to account for interspecies (10X) and intraspecies (10X) extrapolation and an FQPA safety factor of 3X. Thus, the chronic population adjusted dose (cPAD) is estimated to be 0.040 mg/kg bw/day.

iv. *Incidental oral (short- and intermediate-term).* This endpoint was selected on the basis of the maternal effects observed in the rat 2-generation reproductive toxicity study at the LOAEL of 50 mg/kg bw/day metaflumizone (NOAEL = 20 mg/kg bw/day). Maternal toxicity consisted of poor general health and body weight deficits which were also associated with improper nursing behavior. Similar effects were also noted in a developmental neurotoxicity study (gavage, range finding) also considered for this endpoint. In this study, poor maternal health was also observed at the LOAEL of 120 mg/kg bw/day metaflumizone (NOAEL = 80 mg/kg bw/day). Both studies considered for this endpoint achieved a clear NOAEL for the offspring effects, but the NOAEL of 20 mg/kg bw/day for the 2-generation reproductive toxicity study is considered more protective. The Agency's level of concern for this scenario is 300 based on a 10X intraspecies factor, a 10X interspecies factor, and an FQPA safety factor of 3X.

v. *Dermal (short- and intermediate-term).* This endpoint was based on a rat 90-day dermal toxicity study in which deficits in body weight, body-weight gain and food consumption (in males and females); anogenital smearing; increased macrophages in the thymus; lymphocyte necrosis in the mesenteric lymph nodes; diffuse atrophy of the mandibular lymph node; and increased hemosiderin in the liver (females only) were observed at the LOAEL of 300 mg/kg bw/day (NOAEL = 100 mg/kg bw/day). The Agency's level of concern for this scenario is 100 based on a 10X interspecies factor, and a 10X intraspecies factor.

vi. *Inhalation (short- and intermediate-term).* There is a 28-day inhalation study for this exposure scenario. There was no NOAEL identified for female rats. At the LOAEL of 0.10 mg/Liter (L) metaflumizone (NOAEL = 0.03 mg/L), histopathology of the nasal tissues, lungs, thymus, prostate, and adrenal cortex was observed in males. The LOAEL identified in females resulted in lymphocyte necrosis in the mesenteric lymph node. The Agency's level of concern for this scenario is 1,000 based on a 10X interspecies factor, a 10X intraspecies factor, and an FQPA safety factor of 10X. Route-specific toxicity studies were selected for assessment of

short-intermediate-term dermal, inhalation, and oral exposures. Short-intermediate-term dermal and inhalation exposures can be aggregated based on the immunotoxic effects seen at the LOAEL in the selected studies. Short/intermediate-term oral, dermal, and inhalation exposures can be aggregated based on the decreased body weight or decreased body-weight gain effects seen at the LOAEL in the selected oral and dermal studies and at doses above the LOAEL in the selected inhalation study.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to metaflumizone, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from metaflumizone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for metaflumizone. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues. It was further assumed that 100% of crops with the requested uses of metaflumizone were treated.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues. It was further assumed that 100% of crops with the requested uses of metaflumizone were treated.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that metaflumizone does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for metaflumizone. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for metaflumizone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of metaflumizone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of metaflumizone for acute exposures are estimated to be 1.14 parts per billion (ppb) for surface water and 0.00214 ppb for ground water. The EDWCs of metaflumizone for chronic exposures for non-cancer chronic assessments are estimated to be 0.597 ppb for surface water and 0.00214 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 1.14 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.597 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Metaflumizone is currently registered for the following uses that could result in residential exposures: Pet spot-on products to control fleas on dogs and cats; fire ant bait products for application to lawns, landscapes, golf courses, and other non-cropland area. In addition, a pending fly bait product is proposed for use in areas where people may be present; therefore, a residential exposure assessment was performed for this use.

EPA assessed residential exposure using the following assumptions: For the pet spot-on products, residential handler exposure is not expected, because the product is applied directly from a tube to the pet. Pet spot-on applications are expected to result in short- and intermediate-term post-application dermal exposure to all populations, and incident oral exposure (i.e., hand-to-mouth) for children 3 to <6 years of age. For the fire ant bait, applications to home lawns are expected to result in short-term, residential handler exposure to adults. Fire ant bait applications to lawns, landscapes, golf-courses, and other non-cropland areas are expected to result in short-term, post-application dermal exposure to adults, adolescents, and children 3 to <6 years old, and incident oral exposure for children 3 to <6 years old. For the pending fly bait product, residential handler exposure is not expected, because the product is applied by commercial handlers. The pending fly bait product is expected to result in short-term, post-application dermal exposure to adults and children 3 to <6 years old, and incident oral exposure to children 3 to <6 years old.

For residential handlers, dermal and inhalation exposures are combined since the endpoints are similar for these routes. For children (3 to <6 year olds), post-application hand-to-mouth and dermal exposures are combined. Since the levels of concern (LOCs) for the dermal, inhalation and incidental oral routes are not the same (dermal LOC = 100, inhalation LOC = 1,000, and incidental oral LOC = 300), these routes were combined using the aggregate risk index approach. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found metaflumizone to share a common mechanism of toxicity with any other substances, and metaflumizone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that metaflumizone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for

prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence for increased qualitative or quantitative sensitivity/susceptibility resulting from prenatal and/or postnatal exposures. In the rat prenatal development toxicity study, there was no offspring toxicity reported at any dose tested whereas in the rabbit study a maltransformation based on an absent subclavian artery was noted to occur only in the presence of severe maternal toxicity. Similarly, offspring mortality in the 2-generation reproductive toxicity occurred only in the presence of a poor maternal health state. Thus, there is no evidence for increased susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA safety factor were reduced from 10X to 3X for all oral exposure scenarios; retained at 10X for inhalation exposure scenarios; and reduced to 1X for dermal exposures. That decision is based on the following findings:

i. The toxicity database for metaflumizone is complete.

ii. There is no indication that metaflumizone directly affects the nervous system. Clinical signs consisting of piloerection and body temperature variations were observed only in the absence of neuropathology and in the presence of a poor general state. There is no need for a developmental neurotoxicity study or additional uncertainty factors to account for neurotoxicity.

iii. There is no evidence that metaflumizone results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary analyses assumed tolerance-level residues, 100 PCT, and modeled drinking water estimates. Therefore, HED concludes that while the submission of data/information by the petitioner addressing the residue chemistry deficiencies may conceivably result in adjustment of the maximum theoretical residue estimate, actual metaflumizone dietary exposure estimates will not be greater than those generated in the current risk assessment. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to metaflumizone in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by metaflumizone.

v. Dietary exposures (which are more relevant for human exposures) exhibited an approximately 2-fold greater absorption into the systemic circulation and, thus, can potentially lead to toxicity at 2-fold lower levels of exposure. Applying a FQPA safety factor of 3X for all oral exposure scenarios is adequate to protect against any greater toxicity that might occur in dietary exposures (absorption was noted to be 2-fold greater in dietary versus oral gavage studies).

vi. The FQPA safety factor of 10X is being retained for inhalation exposure scenarios for the use of a LOAEL instead of a NOAEL (no NOAEL achieved) for histopathological lesions consisting of lymphocyte necrosis in the mesenteric lymph node. The FQPA safety factor of 10X is adequate due to the severity of lymphocyte necrosis being minimal to slight and not exhibiting a strong dose dependence.

vii. The FQPA safety factor for dermal exposure scenarios is being reduced from 10X to 1X since there is a route-specific study with a clear NOAEL.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to metaflumizone will occupy <1% of the aPAD for females 13–49 years old. An acute dietary exposure estimate was generated for females 13–49 years old, but not for the remaining population subgroups since an endpoint attributed to a single dose was not identified for those populations.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to metaflumizone from food and water will utilize <1% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of metaflumizone is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Metaflumizone is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to metaflumizone. Since the level of concern (LOC) is different for dermal and oral exposures (100 and 300, respectively), the aggregate risk index method was used to determine aggregate risk (aggregate risk indices > 1 are not a risk of concern).

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate risk indices of 3 for the general population, and 2 for children 1–2 years old. Since the LOCs for the dermal, inhalation and incidental oral routes are not the same (dermal LOC = 100, inhalation LOC = 1,000, and incidental oral LOC = 300), these routes were combined using the aggregate risk index approach. Because EPA's LOC for metaflumizone is an aggregate risk index less than 1, the aggregate risks are not of concern. These aggregate risk indices utilize residential exposure estimates from the pet spot-on products, which represent the worst-case exposure scenario. However, it should be noted that all registered pet spot-on products containing metaflumizone are pending voluntary cancellation; therefore, these aggregate risk indices can be considered conservative.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Metaflumizone is currently registered for uses that could result in intermediate-term residential exposure;

however, since the PODs for the short- and intermediate-term durations are the same for metaflumizone, the short-term aggregate assessment is protective of longer-term exposures.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, metaflumizone is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to metaflumizone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatograph/mass spectrometer/mass spectrometer (LC/MS/MS) Method 531/0) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for metaflumizone.

V. Conclusion

Therefore, tolerances are established for residues of metaflumizone, (E and Z isomers; 2-[2-(4-cyanophenyl)-1-[3-(trifluoromethyl) phenyl]ethylidene]-*N*-[4-(trifluoromethoxy)phenyl] hydrazinecarboxamide) and its metabolite 4-{2-oxo-2-[3-(trifluoromethyl) phenyl]ethyl}-benzonitrile, in or on: Fruit, citrus, group 10 at 0.04 ppm; nut, tree, group 14 at 0.04 ppm; almond, hulls at 0.04 ppm; and grape at 0.04 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 3, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.657 is added to subpart C to read as follows:

§ 180.657 Metaflumizone; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide metaflumizone, including its metabolites and degradates, in or on the commodities listed in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only the sum of metaflumizone (E and Z isomers; 2-[2-(4-cyanophenyl)-1-[3-(trifluoromethyl) phenyl]ethylidene]-*N*-[4-(trifluoromethoxy)phenyl]

hydrazinecarboxamide) and its metabolite 4-{2-oxo-2-[3-(trifluoromethyl) phenyl]ethyl}-benzonitrile, calculated as the stoichiometric equivalent of metaflumizone, in or on the following commodities:

Commodity	Parts per million
Almond, hulls	0.04
Fruit, citrus, group 10	0.04
Grape	0.04
Nut, tree, group 14	0.04

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2012–3795 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[EPA–HQ–SFUND–2011–0965; FRL–9635–9]

Designation of Hazardous Substances; Designation, Reportable Quantities, and Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to reinstate the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations by a November 8, 2000 final rule.

DATES: This rule is effective on April 23, 2012 without further notice, unless EPA receives adverse comment by March 23, 2012. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2011–0965, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: superfund.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Attention Docket ID No. *EPA–HQ–SFUND–2011–0965.* Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2011–0965. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA–HQ–SFUND–2011–0965 docket. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Superfund Docket telephone number is (202) 566–0276. EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this direct final rule, contact Lynn Beasley at (202) 564–1965 (*beasley.lynn@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action merely reinstates the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from regulations by a November 8, 2000 final rule. However, in the "Proposed Rules" section of today's **Federal Register,** we are also publishing a separate proposed rule to reinstate these same maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect until EPA addresses all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Type of entity	Examples of affected entities
Federal Agencies	National Response Center and any Federal agency that may release or respond to releases of hazardous substances.

Type of entity	Examples of affected entities
State and Local Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Responsible Parties	Those entities responsible for the release of a hazardous substance from a vessel or facility. Those entities with an interest in the substances that were inadvertently removed from the table of maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172 in 40 CFR 302.6(b)(1)(iii).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. What should I consider as I prepare my comments for EPA?

A. Submitting CBI

Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

IV. What does this amendment do?

This direct final rule reinstates the maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172 to the table found in 40 CFR 302.6(b)(1)(iii). A November 8, 2000 final rule (Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Final Rule) inadvertently removed the maximum observed constituent concentrations for those listed hazardous wastes from the table in that section when it was amended to include the maximum observed constituent concentrations for listed hazardous wastes K174 and K175. (*See* 65 FR 67132.) The maximum observed constituent concentrations were included in the 40 CFR 302.6 regulations to allow generators, transporters, and disposal facilities handling these hazardous wastes to calculate reportable quantities (RQs) using the mixture rule [1] developed in connection with the Clean Water Act section 311 regulations. The listed hazardous wastes K169, K170, K171, and K172 and their respective RQs are included in Table 302.4—List of Hazardous Substances and Reportable Quantities and Appendix A to section 302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances of Title 40 of the Code of Federal Regulations. However, the aforementioned Table 302.4 and Appendix A do not contain the maximum observed constituent concentrations. Section 302.6 is the only source of these maximum observed constituent concentrations contained in 40 CFR 302—Designation, Reportable Quantities, and Notification.

V. How were the maximum observed constituent concentrations inadvertently removed?

The inadvertent removal of the maximum observed constituent concentrations for K169, K170, K171, and K172 from § 302.6 was the result of a formatting error. On November 8, 2000, EPA issued a final rule (65 FR 67132) in the **Federal Register** that amended 40 CFR 302.6(b)(1)(iii) by adding entries K174 and K175 to an existing table of maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172. The **Federal Register** final rule did not contain the proper signal (5 asterisks) to the Office of the Federal Register that would cause the addition of entries K174 and K175 to the existing table and instead replaced the existing table with a table that only included entries for K174 and K175. The missing signal (5 asterisks) was a formatting error. The proper signal (5 asterisks) was contained in the proposed rule that was published on August 25, 1999. (*See* 64 FR 46539.)

On November 14, 2011, Artisan EHS Consulting, LLC (Artisan EHS) submitted a request for correction of information under the Data Quality Act (also known as the Information Quality Act),[2] as implemented through the Office of Management and Budget [3] and the EPA.[4] [5] EPA confirmed the accuracy

[1] 44 FR 50767, Aug. 29, 1979, Final Rulemaking; Water Programs; Determination of Reportable Quantities for Hazardous Substances; and 50 FR 13463, Apr. 4, 1985, Final rule; Notification Requirements; Reportable Quantity Adjustments. Discharges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its reportable quantity.

[2] Section 5(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554; 44 U.S.C. 3516 (notes).

[3] Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452 (Feb. 22, 2002).

[4] Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity, of Information Disseminated by the Environmental Protection Agency, EPA/260R–02–008 (October 2002).

[5] The letter from Artisan EHS can be found in the docket for this final rule, EPA–HQ–SFUND–2011–0965.

of the Artisan EHS' request which led to this direct final rule.[6]

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This direct final action does not impose any new information collection burden. The amendments in this direct final rule simply reinstates the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations when they were amended to include the maximum observed constituent concentrations for other newly listed hazardous wastes in a November 8, 2000 final rule. This direct final rule does not change any reporting requirements in the general provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing subparts of 40 CFR 302 under the provisions of the *Paperwork Reduction Act* , 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0046. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Subparts that will be added through separate rulemakings will document the respective information collection requirements in their own ICR documents.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule simply reinstates the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations when they were amended to include the maximum observed constituent concentrations for other newly listed hazardous wastes in a November 8, 2000 final rule. The direct final rule does not itself add any additional subparts or requirements. The direct final rule will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The amendments in this direct final rule reinstate the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations when they were amended to include the maximum observed constituent concentrations for other newly listed hazardous wastes in a November 8, 2000 final rule.

E. Executive Order 13132: Federalism

Executive Order (EO) 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the EO to include regulations that 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."

This direct final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132.

This amendment applies directly to responsible parties. They do not apply to governmental entities unless the government entity releases any of the listed hazardous wastes. This regulation also does not limit the power of States or localities to the responsible parties. Thus, EO 13132 does not apply to this direct final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The changes in this direct final rule do not result in any changes to the requirements of 40 CFR 302.6. Thus Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This direct final rule is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The changes in this direct final rule do not result in any changes to the requirements in 40 CFR 302.6.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

[6] In their letter, Artisan EHS also pointed out a typographical error—that is, at the end of 40 CFR 302.6 there is an erroneous reference—'65 FR 87132, Nov. 8, 2001' should read '65 FR 67132, Nov. 8, 2000. Typographical errors are corrected by the Office of the Federal Register. On November 23, 2011, EPA requested that the Office of **Federal Register** change the reference accordingly—that change was made and is available to view at: *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/index.tpl;* follow the links to 40 CFR 302.6.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the amendments do not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

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

List of Subjects in 40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 14, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

■ 2. In § 302.6, paragraph (b)(1)(iii), the table is amended by adding entries K169, K170, K171, and K172 in numerical order to read as follows:

§ 302.6 Notification requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

Waste	Constituent	Max ppm
K169	Benzene	220.0
K170	Benzene	1.2
	Benzo (a) pyrene	230.0
	Dibenz (a,h) anthracene	49.0
	Benzo (a) anthracene	390.0
	Benzo (b) fluoranthene	110.0
	Benzo (k) fluoranthese	110.0
	3-Methylcholanthrene	27.0
	7, 12-Dimethylbenz (a) anthracene	1,200.0
K171	Benzene	500.0
	Arsenic	1,600.0
K172	Benzene	100.0
	Arsenic	730.0

* * * * * * *

[FR Doc. 2012–4060 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 382 and 391

[Docket No. FMCSA–2011–0073]

RIN 2126–AB35

Harmonizing Schedule I Drug Requirements

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) is correcting a Final Rule that appeared in the **Federal Register** on January 30, 2012 (77 FR 4479), which amended the physical qualifications for drivers and the instructions for the medical examination report to clarify that drivers may not use Schedule I drugs and be qualified to drive commercial motor vehicles (CMVs) under any circumstances.

DATES: Effective February 22, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Angela Ward, Nurse Consultant, Medical Programs Office, Federal Motor Carrier Safety Administration, telephone: 202–366–3109; email: *angela.ward@dot.gov*.

SUPPLEMENTARY INFORMATION: FMCSA's recent rule harmonizing Schedule I drug requirements included several changes to the Instructions to the Medical Examination Report for Commercial Driver Fitness Determination, form 649–F (6045). Although no changes were to be made to the form itself, due to a printing error, several changes were inadvertently made. The following correction reverses those changes.

In FR Doc. 2012–1905 appearing on page 4483 in the **Federal Register** of Monday, January 30, 2012, in Instruction 8, correct the form in § 391.43(f) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(f) * * *

BILLING CODE 4910–EX–P

Medical Examination Report
FOR COMMERCIAL DRIVER FITNESS DETERMINATION

649-F (6045)

1. DRIVER'S INFORMATION Driver completes this section

Driver's Name (Last, First, Middle)	Social Security No.	Birthdate M / D / Y	Age	Sex ☐ M ☐ F	New Certification ☐ Recertification ☐ Follow-up ☐	Date of Exam

Address	City, State, Zip Code	Work Tel: ( ) Home Tel: ( )	Driver License No.	License Class ☐ A ☐ B ☐ C ☐ D ☐ Other	State of Issue

2. HEALTH HISTORY Driver completes this section, but medical examiner is encouraged to discuss with driver.

Yes	No	
☐	☐	Any illness or injury in the last 5 years?
☐	☐	Head/Brain injuries, disorders or illnesses
☐	☐	Seizures, epilepsy ☐ medication_____
☐	☐	Eye disorders or impaired vision (except corrective lenses)
☐	☐	Ear disorders, loss of hearing or balance
☐	☐	Heart disease or heart attack; other cardiovascular condition ☐ medication_____
☐	☐	Heart surgery (valve replacement/bypass, angioplasty, pacemaker) ☐
☐	☐	High blood pressure medication_____
☐	☐	Muscular disease
☐	☐	Shortness of breath

Yes	No	
☐	☐	Lung disease, emphysema, asthma, chronic bronchitis
☐	☐	Kidney disease, dialysis
☐	☐	Liver disease
☐	☐	Digestive problems
☐	☐	Diabetes or elevated blood sugar controlled by: ☐ diet ☐ pills ☐ insulin
☐	☐	Nervous or psychiatric disorders, e.g., severe depression medication_____
☐	☐	Loss of, or altered consciousness

Yes	No	
☐	☐	Fainting, dizziness
☐	☐	Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring
☐	☐	Stroke or paralysis
☐	☐	Missing or impaired hand, arm, foot, leg, finger, toe
☐	☐	Spinal injury or disease
☐	☐	Chronic low back pain
☐	☐	Regular, frequent alcohol use
☐	☐	Narcotic or habit forming drug use

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

Driver's Signature_____ Date_____

Medical Examiner's Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving. This discussion must be documented below.)

TESTING (Medical Examiner completes Section 3 through 7) Name: Last, First, Middle,

3. VISION

Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70 degrees peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

INSTRUCTIONS: When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio with 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. ***Monocular drivers are not qualified.***

Numerical readings must be provided.

ACUITY	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/	20/	Right Eye ○
Left Eye	20/	20/	Left Eye ○
Both Eyes	20/	20/	

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors ? ☐ Yes ☐ No

Applicant meets visual acuity requirement only when wearing: ☐ Corrective Lenses

Monocular Vision: ☐ Yes ☐ No

Complete next line only if vision testing is done by an opthalmologist or optometrist

Date of Examination | Name of Ophthalmologist or Optometrist (print) | Tel. No. | License No./ State of Issue | Signature

4. HEARING

Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB

☐ Check if hearing aid used for tests. ☐ Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500Hz, -10dB for 1,000 Hz, -8.5 dB for 2000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.

Numerical readings must be recorded.

	Right ear	Left Ear
a) Record distance from individual at which forced whispered voice can first be heard.	\ Feet	\ Feet

b) If audiometer is used, record hearing loss in decibels. (acc. to ANSI Z24.5-1951)	Right Ear			Left Ear		
	500 Hz	1000 Hz	2000 Hz	500 Hz	1000 Hz	2000 Hz
	Average:			Average:		

5. BLOOD PRESSURE/ PULSE RATE

Numerical readings must be recorded. Medical Examiner should take at least two readings to confirm BP.

Blood Pressure	Systolic	Diastolic

Driver qualified if ≤140/90.

Pulse Rate: ☐ Regular ☐ Irregular

Record Pulse Rate:_____

Reading	Category	Expiration Date	Recertification
140-159/90-99	Stage 1	1 year	1 year if ≤140/90. One-time certificate for 3 months if 141-159/91-99.
160-179/100-109	Stage 2	One-time certificate for 3 months.	1 year from date of exam if ≤140/90
≥180/110	Stage 3	6 months from date of exam if <140/90	6 months if ≤ 140/90

6. LABORATORY AND OTHER TEST FINDINGS

Numerical readings must be recorded.

URINE SPECIMEN	SP. GR.	PROTEIN	BLOOD	SUGAR

Urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

Other Testing (Describe and record) _____

7. PHYSICAL EXAMINATION Height: _____ (in.) Weight: _____ (lbs.) Name: Last, First, Middle,

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for. See *Instructions to the Medical Examiner* for guidance.

BODY SYSTEM	CHECK FOR:	YES*	NO	BODY SYSTEM	CHECK FOR:	YES*	NO
1. General Appearance	Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse.			7. Abdomen and Viscera	Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness.		
2. Eyes	Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos. Ask about retinopathy, cataracts, aphakia, glaucoma, macular degeneration and refer to a specialist if appropriate.			8. Vascular System	Abnormal pulse and amplitude, cartoid or arterial bruits, varicose veins.		
3. Ears	Scarring of tympanic membrane, occlusion of external canal, perforated eardrums.			9. Genito-urinary System	Hernias.		
4. Mouth and Throat	Irremediable deformities likely to interfere with breathing or swallowing.			10. Extremities- Limb impaired. Driver may be subject to SPE certificate if otherwise qualified.	Loss or impairment of leg, foot, toe, arm, hand, finger, Perceptible limp, deformities, airophy, weakness, paralysis, clubbing, edema, hypotonia. Insufficient grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly.		
5. Heart	Murmurs, extra sounds, enlarged heart, pacemaker, implantable defibrillator.			11. Spine, other musculoskeletal	Previous surgery, deformities, limitation of motion, tenderness.		
6. Lungs and chest, not including breast examination	Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/ or xray of chest.			12. Neurological	Impaired equilibrium, coordination or speech pattern; asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinki's reflexes, ataxia.		

***COMMENTS:** _____

Note certification status here. See Instructions to the Medical Examiner for guidance.

- ☐ Meets standards in 49 CFR 391.41; qualifies for 2 year certificate
- ☐ Does not meet standards
- ☐ Meets standards, but periodic monitoring required due to _____.
  Driver qualified only for: ☐3 months ☐6 months ☐1 year ☐ Other

- ☐ Wearing corrective lense
- ☐ Wearing hearing aid
- ☐ Accompanied by a _____waiver/ exemption. Driver must present exemption at time of certification.
- ☐ Skill Performance Evaluation (SPE) Certificate
- ☐ Driving within an exempt intracity zone (See 49 CFR 391.62)
- ☐ Qualified by operation of 49 CFR 391.64

Temporarily disqualified due to (condition or medication): _____

Return to medical examiner's office for follow up on _____

Medical Examiner's signature _____
Medical Examiner's name _____
Address _____
Telephone Number _____

If meets standards, complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(h). (Driver must carry certificate when operating a commercial vehicle.)

49 CFR 391.41 Physical Qualifications for Drivers

THE DRIVER'S ROLE

Responsibilities, work schedules, physical and emotional demands, and lifestyles among commercial drivers vary by the type of driving that they do. Some of the main types of drivers include the following: turn around or short relay (drivers return to their home base each evening); long relay (drivers drive 9-11 hours and then have at least a 10-hour off-duty period), straight through haul (cross country drivers); and team drivers (drivers share the driving by alternating their 5-hour driving periods and 5-hour rest periods.)

The following factors may be involved in a driver's performance of duties: abrupt schedule changes and rotating work schedules, which may result in irregular sleep patterns and a driver beginning a trip in a fatigued condition; long hours; extended time away from family and friends, which may result in lack of social support; tight pickup and delivery schedules, with irregularity in work, rest, and eating patterns, adverse road, weather and traffic conditions, which may cause delays and lead to hurriedly loading or unloading cargo in order to compensate for the lost time; and environmental conditions such as excessive vibration, noise, and extremes in temperature. Transporting passengers or hazardous materials may add to the demands on the commercial driver.

There may be duties in addition to the driving task for which a driver is responsible and needs to be fit. Some of these responsibilities are: coupling and uncoupling trailer(s) from the tractor, loading and unloading trailer(s) (sometimes a driver may lift a heavy load or unload as much as 50,000 lbs. of freight after sitting for a long period of time without any stretching period); inspecting the operating condition of tractor and/or trailer(s) before, during and after delivery of cargo; lifting, installing, and removing heavy tire chains; and, lifting heavy tarpaulins to cover open top trailers. The above tasks demand agility, the ability to bend and stoop, the ability to maintain a crouching position to inspect the underside of the vehicle, frequent entering and exiting of the cab, and the ability to climb ladders on the tractor and/or trailer(s).

In addition, a driver must have the perceptual skills to monitor a sometimes complex driving situation, the judgment skills to make quick decisions, when necessary, and the manipulative skills to control an oversize steering wheel, shift gears using a manual transmission, and maneuver a vehicle in crowded areas.

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§391.41 PHYSICAL QUALIFICATIONS FOR DRIVERS

(a) A person shall not drive a commercial motor vehicle unless he is physically qualified to do so and, except as provided in §391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a commercial motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person:

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate (formerly Limb Waiver Program) pursuant to §391.49.

(2) Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a SPE Certificate pursuant to §391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other card ovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a commercial motor vehicle safely.

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a commercial motor vehicle safely.

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a commercial motor vehicle safely.

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green and amber;

(11) First perceives a forced whispered voice in the better ear not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz with or without a hearing device when the audiometric device is calibrated to the American National Standard (formerly ASA Standard) Z24.5-1951;

(12)(i) Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug.

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(13) Has no current clinical diagnosis of alcoholism.

INSTRUCTIONS TO THE MEDICAL EXAMINER

General Information

The purpose of this examination is to determine a driver's physical qualification to operate a commercial motor vehicle (CMV) in interstate commerce according to the requirements in 49 CFR 391.41-49. .Therefore, the medical examiner must be knowledgeable of these requirements and guidelines developed by the FMCSA to assist the medical examiner in making the qualification determination. The medical examiner should be familiar with the driver's responsibilities and work environment and is referred to the section on the form, **The Driver's Role**.

In addition to reviewing the **Health History** section with the driver and conducting the physical examination, the medical examiner should discuss common prescriptions and over-the-counter medications relative to the side effects and hazards of these medications while driving. Educate the driver to read warning labels on all medications. History of certain conditions may be cause for rejection, particularly if required by regulation, or may indicate the need for additional laboratory tests or more stringent examination perhaps by a medical specialist. These decisions are usually made by the medical examiner in light of the driver's job responsibilities, work schedule and potential for the conditions to render the driver unsafe.

Medical conditions should be recorded even if they are not cause for denial, and they should be discussed with the driver to encourage appropriate remedial care. This advice is especially needed when a condition, if neglected, could develop into a serious illness that could affect driving.

If the medical examiner determines that the driver is fit to drive and is also able to perform non-driving responsibilities as may be required, the medical examiner signs the medical certificate which the driver must carry with his/her license. The certificate must be dated. **Under current regulations, the certificate is valid for two years, unless the driver has a medical condition that does not prohibit driving but does require more frequent monitoring**. In such situations, the medical certificate should be issued for a shorter length of time. The physical examination should be done carefully and at least as complete as is indicated by the attached form. Contact the FMCSA at (202) 366-1790 for further information (a vision exemption, qualifying drivers under 49 CFR.391.64, etc.).

Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial drivers, the Federal Motor Carrier Safety Administration (FMCSA) has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that (1) is directly relevant to the physical examination and (2) is not already included in the medical examination form. The specific regulation is printed in italics and it's reference by section is highlighted.

Federal Motor Carrier Safety Regulations
-Advisory Criteria-

Loss of Limb:
§391.41(b)(1)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no loss of a foot, leg, hand or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

Limb Impairment:
§391.41(b)(2)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iv) Has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

A person who suffers loss of a foot, leg, hand or arm or whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skill Performance Evaluation Certification Program pursuant to section 391.49, assuming the person is otherwise qualified.

With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The SPE Certification Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations (FMCSRs) by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are still present, and thus restrictions may be included on individual SPE certificates when a State Director for the FMCSA determines they are necessary to be consistent with safety and public interest.

If the driver is found otherwise medically qualified (391.41(b)(3) through (13)), the medical examiner must check on the medical certificate that the driver is qualified only if accompanied by a SPE certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a curent SPE certificate for his/her physical disability.

Diabetes
§391.41(b)(3)

A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semiconsciousness, diabetic coma or insulin shock).

The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the dangers, the FMCSA has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the FMCSRs.

Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule. CMV drivers who do not meet the Federal diabetes standard may call (202) 366-1790 for an application for a diabetes exemption.
(See Conference Report on Diabetic Disorders and Commercial Drivers and Insulin-Using Commercial Motor Vehicle Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Cardiovascular Condition
§391.41(b)(4)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive cardiac failure.

The term "has no current clinical diagnosis of" is specifically designed to encompass: "a *clinical diagnosis of*" (1) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit The term "*known to be*

accompanied by" is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified, a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a driver is certified that he or she have a normal resting and stress electrocardiogram (ECG), no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not unqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope. Coumadin is a medical treatment which can improve the health and safety of the driver and should not, by its use, medically disqualify the commercial driver. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver. The FMCSA should be contacted at (202) 366-1790 for additional recommendations regarding the physical qualification of drivers on coumadin.
(See Cardiovasular Advisory Panel Guidelines for the Medical examination of Commercial Motor Vehicle Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Respiratory Dysfunction
§391.41(b)(5)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.

Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner detects a respiratory dysfunction, that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not unqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.
(See Conference on Pulmonary/Respiratory Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm

Hypertension
§391.41(b)(6)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of high blood pressure likely to interfere with ability to operate a commercial motor vehicle safely.

Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criteria is based on FMCSA's Cardiovascular Advisory Guidelines for the Examination of CMV Drivers, which used the Sixth Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure (1997).

Stage 1 hypertension corresponds to a systolic BP of 140-159 mmHg and/or a diastolic BP of 90-99 mmHg. The driver with a BP in this range is at low risk for hypertension-related acute incapacitation and may be medically certified to drive for a one-year period. Certification examinations should be done annually thereafter and should be at or less than 140/90. If less than 160/100, certification may be extended one time for 3 months.

A blood pressure of 160-179 systolic and/or 100-109 diastolic is considered Stage 2 hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a one time certification of three months to reduce his or her blood pressure to less than or equal to 140/90. A blood pressure in this range is an absolute indication for anti-hypertensive drug therapy. Provided treatment is well tolerated and the driver demonstrates a BP value of 140/90 or less, he or she may be certified for one year from date of the initial exam. The driver is certified annually thereafter.

A blood pressure at or greater than 180 (systolic) and 110 (diastolic) is considered Stage 3, high risk for an acute BP-related event. The driver may **not** be qualified, even temporarily, until reduced to 140/90 or less and treatment is well tolerated. The driver may be certified for 6 months and biannually (every 6 months) thereafter if at recheck BP is 140/90 or less.

Annual recertification is recommended if the medical examiner does not know the severity of hypertension prior to treatment.

An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days.

Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of somnolence or syncope are particularly undesirable in commercial drivers.

Secondary hypertension is based on the above stages. Evaluation is warranted if patient is persistently hypertensive on maximal or near-maximal doses of 2-3 pharmacologic agents. Some causes of secondary hypertension may be amenable to surgical intervention or specific pharmacologic disease.
(See Cardiovascular Advisory Panel Guidelines for the Medical Examination of Commercial Motor Vehicle Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Rheumatic, Arthritic, Orthopedic, Muscular, Neuromuscular or Vascular Disease §391.41(b)(7)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with the ability to control and operate a commercial motor vehicle safely.

Certain diseases are known to have acute episodes of transient muscle weakness, poor muscular coordination (ataxia), abnormal sensations (paresthesia), decreased muscular tone (hypotonia), visual disturbances and pain which may be suddenly incapacitating. With each recurring episode, these symptoms may become more pronounced and remain for longer periods of time. Other diseases have more insidious onsets and display symptoms of muscle wasting (atrophy), swelling and paresthesia which may not suddenly incapacitate a person but may restrict his/her movements and eventually interfere with the ability to safely operate a motor vehicle. In many instances these diseases are degenerative in nature or may result in deterioration of the involved area.

Once the individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease, then he/she has an established history of that disease. The physician, when examining an individual, should consider the following: (1) the nature and severity of the individual's condition (such as sensory loss or loss of strength); (2) the degree of limitation present (such as range of motion); (3) the likelihood of progressive limitation (not always present initially but may manifest itself over time); and (4) the likelihood of sudden incapacitation. If severe functional impairment exists, the driver does not qualify. In cases where more frequent monitoring is required, a certificate for a shorter period of time may be issued. (See Conference on Neurological Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Epilepsy
§391.41(b)(8)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.

Epilepsy is a chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified: (1) a driver who has a medical history of epilepsy; (2) a driver who has a current clinical diagnosis of epilepsy; or (3) a driver who is taking antiseizure medication.

If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that person's condition will likely cause loss of consciousness or loss of ability to control a motor vehicle is made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6 month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.

Drivers with a history of epilepsy/seizures off antiseizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off antiseizure medication for a 5-year period or more.
(See Conference on Neurological Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Mental Disorders
§391.41(b)(9)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely.

Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention, and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic "nagging" pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined when determining an individual's overall fitness to drive. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.

Many bus and truck drivers have documented that "nervous trouble" related to neurotic, personality, or emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant disqualification. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination. See Psychiatric Conference Report for specific recommendations on the use of medications and potential hazards for driving.
(See Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Vision
§391.41(b)(10)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

The term "ability to recognize the colors of" is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Ishihara, Pseudoisochromatic, Yarn) and doubtful findings are discovered, a controlled test using signal red, green and amber may be employed to determine the driver's ability to recognize these colors.

Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.

If an individual meets the criteria by the use of glasses or contact lenses, the following statement shall appear on the Medical Examiner's Certificate: "Qualified only if wearing corrective lenses."

CMV drivers who do not meet the Federal vision standard may call (202) 366-1790 for an application for a vision exemption.
(See Visual Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Hearing
§391.41(b)(11)
A person is physically qualified to drive a commercial motor vehicle if that person:
First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ADA Standard) Z24.5-1951.

Since the prescribed standard under the FMCSRs is the American Standards Association (ANSI), it may be necessary to convert the audiometric results from the ISO standard to the ANSI standard. Instructions are included on the Medical Examination report form.

If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.

For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18.

23, etc. The examiner should not use only sibilants (s sounding materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered.

If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate "Qualified only when wearing a hearing aid." (See Hearing Disorders and Commercial Motor Vehicle Drivers at: http://www/fmcsa.dot.gov/rulesregs/medreports.htm).

Drug Use
§391.41(b)(12)

A person is physically qualified to drive a commercial motor vehicle if that person does not use any drug or substance identified in 21 CFR 1308.11, an amphetamine, a narcotic, or other habit-forming drug. A driver may use a non-Schedule I drug or substance that is identified in the other Schedules in 21 part 1308 if the substance or drug is prescribed by a licensed medical practitioner who: (A) is familiar with the driver's medical history, and assigned duties; and (B) has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving tasks on a public road. If a driver uses an amphetamine, a narcotic or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. If a driver uses a Schedule I drug or substance, it will be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

A test for controlled substances is not required as part of this biennial certification process. The FMCSA or the driver's employer should be contacted directly for information on controlled substances and alcohol testing under Part 382 of the FMCSRs.

The term "uses" is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results should be confirmed by a second test of greater specificity. The term "habit-forming" is intended to include any drug or medication generally recognized as capable of becoming habitual, and which may impair the user's ability to operate a commercial motor vehicle safely.

The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the successful completion of a drug rehabilitation program, and a negative drug test result. Additionally, given that the certification period is normally two years, the examiner has the option to certify for a period of less than 2 years if this examiner determines more frequent monitoring is required.
(See Conference on Neurological Disorders and Commercial Drivers and Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Alcoholism
§391.41(b)(13)

A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of alcoholism.

The term "current clinical diagnosis of" is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.

* * * * *

Issued on: January 31, 2012.

Larry Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3978 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–EX–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 6048–XB024

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2012 Pacific cod total allowable catch (TAC) specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 17, 2012, through 2400 hrs, A.l.t., December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 4,645 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) and inseason adjustment (76 FR 81875, December 29, 2011).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2012 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 15, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 16, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–4115 Filed 2–16–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 35
Wednesday, February 22, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN–3150–AI92

[NRC–2011–0012]

Low-Level Radioactive Waste Management Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) plans to conduct a public meeting to discuss possible revisions to the regulatory framework for the management of commercial low-level radioactive waste (LLW). The purpose of this public meeting is to gather information and receive feedback from stakeholders and other interested members of the public concerning specific proposed revisions to the Commission's LLW regulations. Consistent with Commission direction, the NRC staff plans to hold a series of three public meetings in 2012 on the proposed revisions to Commission's LLW regulations. This is the first of those public meetings.

DATES: The first public meeting will be held on March 2, 2012, in Phoenix, Arizona. Comments on the issues and questions presented in Section V of the **SUPPLEMENTARY INFORMATION** section of this document should be submitted by July 31, 2012.

ADDRESSES: The public meeting will be held on March 2, 2012, from 8 a.m. to 4 p.m. at the Marriott Renaissance Phoenix Downtown Hotel, 50 East Adams Street, Phoenix, Arizona 85004. The NRC will accept written comments at the public meeting and welcomes active participation from those attending. You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on *http://www.regulations.gov* under Docket ID NRC–2011–0012. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0012. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 492–3668; email: *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.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Ph.D., Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–6887; email: *Mike.Lee@nrc.gov;* or Tarsha Moon, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–6745; email: *Tarsha.Moon@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0012 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0012.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2011–0012 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The Commission's licensing requirements for the disposal of LLW in near-surface [approximately the uppermost 30 meters (100 feet)] facilities reside in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste." These regulations were published in the **Federal Register** on December 27, 1982 (47 FR 57446). The rule applies to any near-surface LLW disposal technology, including shallow-land burial, engineered land disposal methods such as below-ground vaults, earth-mounded concrete bunkers, and augured holes. The regulations emphasize an integrated

systems approach to the disposal of commercial LLW, including site selection, disposal facility design and operation, minimum waste form requirements, and disposal facility closure. To lessen the burden on society over the long periods of time contemplated for the control of the radioactive material, and thus lessen reliance on institutional controls, 10 CFR Part 61 emphasizes passive rather than active systems to limit and retard releases to the environment.

Development of the 10 CFR Part 61 regulation in the early 1980s was based on several assumptions as to the types of wastes likely to go into a commercial LLW disposal facility. To better understand what the likely inventory of wastes available for disposal might be, the NRC conducted a survey of existing LLW generators. The survey, documented in Chapter 3 of NUREG–0782, Draft 10 CFR Part 61 Environmental Impact Statement (DEIS), "Licensing Requirements for Land Disposal of Radioactive Waste" (ADAMS Accession No. ML052590347)—revealed that there were about 37 distinct commercial waste streams consisting of about 25 radionuclides of potential regulatory interest. The specific waste streams in question were representative of the types of commercial LLW being generated at the time. Waste streams associated with the U.S. Department of Energy's (DOE's) nuclear defense complex were not considered as part of the survey, since disposal of those wastes, at that time, was to be conducted at the DOE-operated sites. Over the last several years there have been a number of developments that have called into question some of the key assumptions made in connection with the earlier 10 CFR Part 61 DEIS, including:

- The emergence of potential LLW streams that were not considered in the original 10 CFR Part 61 rulemaking, including large quantities of depleted uranium (DU), and possibly incidental wastes associated with the commercial reprocessing of spent nuclear fuel;
- The DOE's increasing use of commercial facilities for the disposal of defense-related LLW streams; and
- Extensive international operational experience in the management of LLW and intermediate-level radioactive wastes that did not exist at the time 10 CFR Part 61 was promulgated.

The developments previously described will need to be considered if the staff undertakes a revision of 10 CFR Part 61. Waste from the Nation's defense programs has been managed by DOE and is not subject to regulation under 10 CFR Part 61. Instead, DOE has relied on Order 435.1 to specify the disposal requirements for this waste. The current version of this Order has been in place for about 11 years and applies to management of radioactive waste within the DOE complex. Like 10 CFR Part 61, Order 435.1 places a heavy emphasis on performance assessment as part of its radioactive waste management decision-making. The DOE recently started a comprehensive revision of Order 435.1, which it plans to complete sometime in 2012.

III. Recent Commission Direction to the NRC Staff

In a March 18, 2009, staff requirements memorandum (SRM) SRM–SECY–08–0147,[1] the Commission directed the NRC staff to proceed with a 10 CFR Part 61 rulemaking to specify a requirement for a site-specific analysis for the disposal of large quantities of DU including the technical requirements for such an analysis, and to develop a guidance document for public comment that outlines the parameters and assumptions to be used in conducting such site-specific analyses. In a second SRM, SRM SECY–10–0043,[2] the staff was also directed to include blended LLW streams as part of this rulemaking initiative. Following the solicitation of early public input in 2009 (74 FR 30175; Docket ID NRC–2009–0257), the NRC staff subsequently developed a technical basis document for the rulemaking amendment (ADAMS Accession No. ML111040419), shared it with the NRC Agreement States, and proceeded to develop a proposed rulemaking package. In connection with the rulemaking effort, the NRC staff also proposed a two-tier approach for evaluating compliance with 10 CFR Part 61's overall system performance objectives: An assessment that extends to 20,000 years as well as an assessment that extends beyond 20,000 years to the time of peak dose. In May 2011, the NRC staff sought public feedback (76 FR 24831) on the preliminary proposed rulemaking language (ADAMS Accession No. ML111150205), as well as the technical basis for the time of compliance recommendation (ADAMS Accession No. ML111030586) after these materials were made publicly available. (See *http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/uw-streams.html.*) Later in 2011, the staff also briefed the Advisory Committee on Reactor Safeguards (ACRS) on the preliminary proposed rulemaking language for which a Committee Letter Report dated September 22, 2011 (ADAMS Accession No. ML11256A191) was issued to the Commission.

More recently, in a SRM, dated January 19, 2012,[3] the Commission provided additional direction to the NRC staff concerning this particular rulemaking. Specifically, the NRC staff was directed to amend the existing draft rulemaking to include the following:

- Allowing licensees the flexibility to use ICRP dose methodologies in a site-specific performance assessment for the disposal of all radioactive waste.
- A two tiered approach that establishes a compliance period that covers the reasonably foreseeable future and a longer period of performance that is not *a priori* and is established to evaluate the performance of the site over longer timeframes. The period of performance is developed based on the candidate site characteristics (waste package, waste form, disposal technology, cover technology and geo-hydrology) and the peak dose to a designated receptor
- Flexibility for disposal facilities to establish site-specific waste acceptance criteria based on the results of the site's performance assessment and intruder assessment.
- A compatibility category for the elements of the revised rule that establish the requirements for site-specific performance assessments and the development of the site-specific waste acceptance criteria that ensures alignment between the States and Federal government on safety fundamentals, while providing the States with the flexibility to determine how to implement these safety requirements.

In the January 2012 SRM, the Commission also directed the NRC staff to engage stakeholders and other members of the interested public to discuss and finalize the NRC's approach to address the matters raised by the Commission. The Commission also noted that it would reserve judgment on the regulatory form these elements should take in any final rule following NRC staff evaluation of stakeholder input. Accordingly, the NRC staff plans to hold a series of three public meetings in March, May, and July 2012 on the proposed revisions to 10 CFR Part 61. After completion of the public outreach campaign, the staff will prepare an

[1] See *http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2008/2008–0147srm.pdf.*

[2] See *http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2010/2010-0043srm.pdf.*

[3] See *http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secy/2011/2011–0002comgeawdm-srm.pdf.*

amended technical basis document and commence with the rulemaking. Changes will also need to be made to any 10 CFR Part 61 performance assessment companion guidance document to address the recent June 2012 direction. The completion date for submittal of a revised rulemaking package is currently July 19, 2013.

The Commission also directed the staff to gather information on the options presented in SECY–10–0165, dated December 27, 2010,[4] concerning the staff's approach to a risk-informing 10 CFR Part 61. Previously, the NRC staff sponsored an earlier workshop on SECY–10–0165, on March 4, 2011 (76 FR 10810). The staff intends to seek the public's views on earlier stakeholder comments received as well as other proposals for a risk-informed revision of 10 CFR Part 61.

IV. Emerging Issues Concerning Part 61

The NRC staff has also conducted other activities related to 10 CFR Part 61. These include revisions to the Commission's *LLW Volume Reduction Policy Statement* (76 FR 50500; August 15, 2011); and the *Concentration Averaging Branch Technical Position* (76 FR 4739; January 26, 2011). Through the course of those stakeholder interactions, the staff received comments and suggestions relevant to the more comprehensive revision of 10 CFR Part 61. For example, stakeholders have recommended changes that would lengthen the period of institutional controls and allow a site-specific intruder assessment. Some stakeholders have questioned basic fundamental tenets of 10 CFR Part 61 including the need to protect the inadvertent intruder. The staff intends to seek the public's views on these and other stakeholder comments.

V. NRC Public Meeting

The purpose of this public meeting is to gather information from stakeholders and other interested members of the public concerning the rulemaking proposals identified by the Commission in its January 2012 SRM. This overall approach is consistent with NRC's openness policy and is consistent with the type of public outreach initiative originally used by the NRC staff to develop 10 CFR Part 61. The March 2, 2012, public meeting will be organized into three parts. In the first part, the NRC staff will seek public feedback on the pros and cons of the four technical issues specifically identified by the Commission in its January 2012 SRM. In the second part, the staff will identify other technical issues identified by stakeholders bearing on the 10 CFR Part 61 rule and seek public feedback on the merits of these (additional) changes that have been suggested in connection with other on-going LLW regulatory initiatives. In the third session, the staff will seek public feedback on the options proposed in SECY–10–0165 and accept other proposals for a comprehensive revision of 10 CFR Part 61.

The public meeting will be held on March 2, 2012, from 8 a.m. to 4 p.m. at the Marriott Renaissance Phoenix Downtown Hotel, 50 East Adams Street, Phoenix, Arizona 85004. Pre-registration for this meeting is not necessary. Members of the public choosing to participate in this meeting remotely can do so in one of two ways—online, or via a telephone (audio) connection. Instructions for remote participation in this meeting follow.

Interested members of the public can also participate in this meeting via webinar. The webinar meeting registration link can be found at: *https://www1.gotomeeting.com/register/191710105*. After registering, instructions for joining the webinar (including a teleconference number and pass code) will be provided via email. All participants will be in "listen-only" mode during the presentation. Participants will have a chance to pose questions either orally after the presentation or in writing during the webinar.

To receive a call back, provide your phone number when you join the meeting, or call the following number and enter the access code:

Call-in toll-free number (US/Canada): 1–888–942–8392, access code: 8568781.

The agenda for the public meeting will be noticed no fewer than ten (10) days prior to the meeting on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm*. Subsequent public meetings are tentatively planned for Dallas, Texas, on May 15, 2012 and late July in Rockville, Maryland.

Comments may be sent to the address listed in the **ADDRESSES** section of this document.

Questions about participation in the public meetings should be directed to the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated at Rockville, Maryland, this 15th day of February 2012.

For the U.S. Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–4090 Filed 2–21–12; 8:45 am]

BILLING CODE 7590–01–P

[4] See *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2010/secy2010-0165/2010-0165scy.pdf*.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0145; Directorate Identifier 2011–NM–066–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 767 airplanes. The existing AD currently requires revising the Airworthiness Limitations Section of the maintenance planning data (MPD) document. Since we issued that AD, a re-evaluation of certain doors and flaps was done based on their fatigue-critical nature. This proposed AD would revise the maintenance program to incorporate an additional limitation, and would add airplanes to the applicability. We are proposing this AD to detect and correct fatigue cracking of the principal structural element (PSEs), which could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by April 9, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2012–0145; Directorate Identifier 2011–NM–066–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On September 4, 2003, we issued AD 2003–18–10, amendment 39–13301 (68 FR 53503, September 11, 2003), for certain The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes. That AD requires revising Subsection B, Section 9, of Boeing 767 Maintenance Planning Data (MPD) Document D622T001–9, titled "Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs)," to incorporate Revision October 2002; and Appendix B of Boeing 767 MPD Document D622T001, Revision December 2002. That AD resulted from analysis of data that identified specific initial inspection thresholds and repetitive inspection intervals for certain principal structural elements (PSEs) to be added to the airworthiness limitation instructions (ALI). We issued that AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

Actions Since Existing AD Was Issued

Since we issued AD 2003–18–10 (68 FR 53503, September 11, 2003), a re-evaluation of certain doors and flaps was done based on their fatigue-critical nature. These items were classified as PSEs and have been included in the revised MPD Document.

Relevant Service Information

We reviewed Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 Maintenance Planning Data (MPD) Document. This service information describes procedures for an additional critical fatigue inspection.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain certain requirements of AD 2003–18–10 (68 FR 53503, September 11, 2003). This proposed AD would revise the Airworthiness Limitations Section of the Maintenance Planning Data (MPD) Document 767 Airworthiness Limitations Instructions (ALI) which adds a critical fatigue inspection and revises the applicability to include additional airplane line numbers.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2003–18–10 (68 FR 53503, September 11, 2003). Since AD 2003–18–10 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2003–18–10 (68 FR 53503, September 11, 2003)	Corresponding requirement in this proposed AD
paragraph (c)	paragraph (g)
paragraph (d)	paragraph (h)

Costs of Compliance

We estimate that this proposed AD affects 417 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise airworthiness limitations [retained actions from existing AD 2003–18–10 (68 FR 53503, September 11, 2003)].	1 work-hour × $85 per hour = $85.	$0	$85	$35,445
Revise airworthiness limitations [new requirements]	1 work-hour × $85 per hour = $85.	0	85	35,445

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–0145; Directorate Identifier 2011–NM–066–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by April 9, 2012.

(b) Affected ADs

This AD supersedes AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003).

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category; line numbers 1 through 997 inclusive.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1A.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 51, Standard Practices/Structures; 52, Doors; 53, Fuselage structure; 54, Nacelle/Pylons; 55, Stabilizers; 56, Windows; and 57, Wings.

(e) Unsafe Condition

This AD was prompted by a re-evaluation of certain doors and flaps based on their fatigue-critical nature. We are issuing this AD to detect and correct fatigue cracking of the principal structural elements (PSEs), which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

Restatement of Requirements AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003), With New Service Information

(g) Revise Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document

For Model 767–200, –300, –300F, and –400ER series airplanes having line numbers 1 through 895 inclusive: Within 18 months after October 16, 2003 (the effective date AD 2003–18–10, (68 FR 53503, September 11, 2003)), revise Subsection B, Section 9, of Boeing 767 MPD Document D622T001–9, entitled "Airworthiness Limitations and Certification Maintenance Requirements," to incorporate Revision October 2002; and Appendix B of Boeing 767 MPD Document D622T001, Revision December 2002; or Subsection B, Airworthiness Limitations—Structural Limitations, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 MPD Document.

(h) Alternative Inspections and Inspection Intervals

Except as provided by paragraphs (i) and (k) of this AD: After the actions required by paragraph (g) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the structural significant items (SSIs) contained in Section 9 of Boeing 767 MPD Document D622T001–9, Revision October 2002.

New Requirements of This AD

(i) Maintenance Program Revision

Within 18 months after the effective date of this AD, revise the maintenance program to incorporate the limitations section in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 MPD Document. Doing this revision terminates the requirements of paragraph (g) of this AD.

Note 2: For the purposes of this AD, the terms principal structural elements (PSEs) as used in this AD, and SSIs as used in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 MPD Document, are considered to be interchangeable.

(j) Alternative Inspections and Inspection Intervals

Except as provided by paragraph (k) of this AD: After the actions required by paragraph (i) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the SSIs contained in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 MPD Document.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), ANM–120S, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information

directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO) to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 9, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4161 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0147; Directorate Identifier 2011–NM–067–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 767–200 and –300 series airplanes. The existing AD requires replacement of the existing deactivation pin, aft cascade pin bushing, and pin insert on each thrust reverser half with new, improved components. Since we issued that AD, we received reports that certain airplanes require installation of a new bushing and deactivation pin with increased load carrying capability and all airplanes powered by Pratt & Whitney JT9D series engines require installation of a new bracket for stowing the deactivation pin. This proposed AD would add a dye penetrant inspection for cracking of the rivet holes of the bushing plate and repair or replacement, if necessary. For certain airplanes, this proposed AD would require replacing the existing bushing with a new bushing and deactivation pin; and installing a new or serviceable stowage bracket for the deactivation pins on all airplanes powered by Pratt & Whitney JT9D series engines. We are proposing this AD to prevent failure of the thrust reverser deactivation pins, which could fail to prevent a deployment of a deactivated thrust reverser in flight and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 9, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2012–0147; Directorate Identifier 2011–NM–067–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On September 19, 2002, we issued AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), for certain Model 767–200 and –300 series airplanes powered by Pratt & Whitney JT9D series engines. The existing AD requires replacement of the existing deactivation pin, aft cascade pin bushing, and pin insert on each thrust reverser half, with new, improved components. The existing AD resulted from reports that the pin insert for the deactivation pin was not able to withstand the load of a powered deployment and could fail on some airplanes. We issued that AD to prevent failure of the thrust reverser deactivation pins, which could fail to

prevent a deployment of a deactivated thrust reverser in flight and consequent reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), we received reports indicating that certain airplanes require installation of a new bushing and pin with increased load carrying capability, and all airplanes powered by Pratt & Whitney JT9D series engines require installation of a new bracket for stowing the deactivation pin. Specifically, we have been advised that the part number (P/N) 315T3222–3 bushing could not be replaced by the P/N 315T3222–10 bushing due to inadequate edge margin on the early thrust reverser configuration.

Relevant Service Information

AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), refers to Boeing Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002, as the appropriate source of service information for the required actions. Boeing has since revised this service information. We reviewed Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, which identifies additional work that needs to be performed on specifically configured Group 2 airplanes for doing a dye penetrant inspection for cracking of the rivet holes of the bushing plate; repair or replacement of the bushing plate with a new or serviceable bushing plate if necessary; and replacing any existing P/N 315T3222–3 or P/N 315T3222–10 bushing and deactivation pin with a new P/N 315T3221–1 bushing and new P/N 315T1604–6 deactivation pin to provide adequate edge margin. Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, also identifies additional work for installing a new or serviceable stowage bracket for the deactivation pins on all airplanes powered by Pratt & Whitney JT9D series engines.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002). This proposed AD would also require accomplishing the actions specified in the service information described previously.

Change to Existing AD

Since AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, paragraphs (a) and (b) of AD 2002–19–11 Amendment 39–12891 (67 FR 61478, October 1, 2002), have been re-identified as paragraphs (g) and (h) in this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 23 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of U.S. registered airplanes	Cost on U.S. operators
Replace deactivation pin, pin bushing, and pin insert (retained actions from existing AD 2002–19–11, Amendment 39-12891 (67 FR 61478, October 1, 2002).	12 work-hours × $85 per hour = $1,020 per inspection cycle.	$12,108	$13,128	23	$301,944
Group 1: Install stowage bracket for deactivation pin (new proposed action).	17 work-hours × $85 per hour = $1,445.	14,644	16,089	16	257,424
Group 2: Replace bushing and deactivation pin and install stowage bracket for thrust reverser deactivation pin (new proposed action).	17 work-hours × $85 per hour = $1,445.	19,972	21,417	7	149,919

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions (repair or replacement of bushing plate) specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), and adding the following new AD:

The Boeing Company: Docket No. FAA–2012–0147; Directorate Identifier 2011–NM–067–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by April 9, 2012.

(b) Affected ADs

This AD supersedes AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002).

(c) Applicability

This AD applies to The Boeing Company Model 767–200 and –300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 7830, Thrust Reverser.

(e) Unsafe Condition

This AD was prompted by reports that certain airplanes require installation of a new bushing and deactivation pin with increased load carrying capability and all airplanes powered by Pratt & Whitney JT9D series engines require installation of a new bracket for stowing the deactivation pin. We are issuing this AD to prevent failure of the thrust reverser deactivation pins, which could fail to prevent a deployment of a deactivated thrust reverser in flight and consequent reduced controllability of the airplane.

(f) Compliance

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

Restatement of Requirements of AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), With Revised Service Information

(g) Replacement of Deactivation Pin, Pin Bushing, and Pin Insert

Within 24 months after November 5, 2002 (the effective date of AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002)), replace the existing deactivation pin, pin bushing in the aft cascade mounting ring, and pin insert on each thrust reverser half, with new, improved components, in accordance with Boeing Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002; or Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009. After the effective date of this AD, only Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, may be used.

Note to paragraph (g): The new, improved insert flange and pin bushing does not physically preclude use of a deactivation pin having P/N 315T1604–2 or –5. However, use of deactivation pins having P/N 315T1604–2 or –5 may not prevent the thrust reversers from deploying in the event of a full powered deployment. Therefore, thrust reversers modified per AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), are required to be installed with the new, longer deactivation pins having P/N 315T1604–6, as specified in Boeing Alert Service Bulletin 767–78A0089, Revision 1, dated May 30, 2002, or Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009. After the effective date of this AD, only Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, may be used.

New Requirements of This AD

(h) Inspection, Bushing and Pin Replacement, and Installation of Stowage Bracket

Within 24 months after the effective date of this AD, do the applicable actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) For Group 2 airplanes as identified in Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, do a dye penetrant inspection for cracking of the rivet holes and replace any P/N 315T3222–3 or P/N 315T3222–10 bushing and deactivation pin with a new or serviceable P/N 315T3221–1 bushing and new P/N 315T1604–6 deactivation pin, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009. If any crack is found in the rivet holes of the bushing plate, before further flight, repair or replace the bushing plate with a new or serviceable bushing plate, as applicable, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) For both Group 1 and Group 2 airplanes, as identified in Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009, install a new or serviceable stowage bracket assembly (P/N 015T0196–4 for the right thrust reverser, P/N 015T0196–5 for the left thrust reverser), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–78A0089, Revision 5, dated June 9, 2009.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–78A0089, Revision 2, dated March 13, 2003; Boeing Alert Service Bulletin 767–78A0089, Revision 3, dated December 18, 2003; or Boeing Alert Service Bulletin 767–78A0089, Revision 4, dated March 6, 2008; are considered acceptable for compliance with the corresponding requirements of paragraph (g) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved for AD 2002–19–11, Amendment 39–12891 (67 FR 61478, October 1, 2002), are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(k) Related Information

(1) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@foo.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 10, 2012.

Ali Bahrami,

Monager, Tronsport Airplane Directorote, Aircraft Certificotion Service.

[FR Doc. 2012–4162 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0144; Directorate Identifier 2011–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; Model A310 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by reports of cracked fuel pump canister hoods located in fuel tanks. This proposed AD would require replacing any hood halves of fuel pump canisters that are cracked. We are proposing this AD to prevent any detached canister hood fragments/debris from being ingested into the fuel feed system, and the metallic debris inside the fuel tank resulting in a potential source of ignition and consequent fire or explosion.

DATES: We must receive comments on this proposed AD by April 9, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2012–0144; Directorate Identifier 2011–NM–152–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0124, dated June 30, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> This [EASA] AD results from findings of cracked fuel pump canister hoods located in fuel tanks.
>
> From the analyses, laboratory testing and examinations made so far, it is presently thought that vibration-induced fatigue can be identified as the root cause for the cracks found on in-service aeroplanes. However, current data does not yet permit to exclude some other potential contributing factors.
>
> This condition, if not detected and corrected, could lead to detached canister hood fragments/debris to be ingested into the fuel feed system. Also, the metallic debris inside the fuel tank could result in a potential source of ignition and consequent fire or explosion.
>
> For the reasons described above, this [EASA] AD requires repetitive [detailed] inspections of all fuel pump canister hood halves and their replacement if any [cracking] damage is found. This [EASA] AD also requires the inspection results to be reported.
>
> This [EASA] AD is considered to be an interim action. The reports that are required by this [EASA] AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the fuel pump canister hood cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, further AD actions could be considered.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A300–28–0089, A300–28–6106, and A310–28–2173, all including Inspection Findings—Reporting Sheet, all Revision 01, all dated April 15, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 221 products of U.S. registry. We also estimate that it would take up to 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $225,420, or $1,020 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour. We have no way of determining the number of products that may need these actions.

We have received no definitive data that would enable us to provide cost estimates for certain parts required for the on-condition actions (replacing fuel pump canister hood halves) specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2012–0144; Directorate Identifier 2011–NM–152–AD.

(a) Comments Due Date

We must receive comments by April 9, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD; certificated in any category; all certificated models; all serial numbers.

(1) Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(3) Airbus Model A300 B4–603, B4–620, and B4–622 airplanes, Model A300 B4–605R and B4–622R airplanes, Model A300 F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of cracked fuel pump canister hoods located in fuel tanks. We are issuing this AD to prevent any detached canister hood fragments/debris from being ingested into the fuel feed system, and the metallic debris inside the fuel tank resulting in a potential source of ignition and consequent fire or explosion.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Initial Inspection and Replacement

Within 30 months after the effective date of this AD, do a detailed inspection for cracking of the fuel pump canister hood halves installed on all fuel pump canisters having part numbers (P/N) 2052C11, 2052C12, and C93R51–601, in accordance with the Accomplishment Instructions of the service bulletin specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable. If any crack is found on any fuel pump canister hood half during any inspection, before further flight, replace the fuel pump canister hood half, in accordance with the Accomplishment Instructions of the service bulletin specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable.

(1) For Model A300 airplanes: Airbus Mandatory Service Bulletin A300–28–0089, including Inspection Findings—Reporting Sheet, Revision 01, dated April 15, 2011.

(2) For Model A300–600 airplanes: Airbus Mandatory Service Bulletin A300–28–6106, including Inspection Findings—Reporting Sheet, Revision 01, dated April 15, 2011.

(3) For Model A310 airplanes: Airbus Mandatory Service Bulletin A310–28–2173, including Inspection Findings—Reporting Sheet, Revision 01, dated April 15, 2011.

(h) Repetitive Inspections

Within 30 months after accomplishing the actions specified in paragraph (g) of this AD, and thereafter at intervals not to exceed 30 months, repeat the detailed inspection specified in paragraph (g) of this AD.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions accomplished before the effective date of this AD in accordance with Airbus Mandatory Service Bulletins A300–28–0089, A300–28–6106, and A310–28–2173, all dated January 13, 2011, as applicable, are considered acceptable for compliance with the corresponding action specified in this AD.

(j) Reporting to Airbus

Submit reports of the findings (both positive and negative) of the inspections required by paragraphs (g) and (h) of this AD to Airbus at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, using the form "Inspection Findings—Reporting Sheet" provided in the service bulletin identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind

Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* 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.

(l) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0124, dated June 30, 2011; and the Airbus mandatory service bulletins identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD; for related information.

Issued in Renton, Washington, on February 7, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4163 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0149; Directorate Identifier 2011–NM–255–AD]

RIN 2120–AA54

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes. This proposed AD was prompted by reports of fatigue cracks in the lap joints, which initiated at scribe lines that were made during production when maskant was removed from the affected skin panels. This proposed AD would require repetitive external phased-array ultrasonic inspections to detect cracks of the affected fuselage skin lap splices in Sections 41, 43, and 44, as applicable, and repair if necessary. We are proposing this AD to detect and correct such fatigue cracking, which, if not detected and corrected, could grow large and cause sudden decompression and the inability to sustain limit flight and pressure loads.

DATES: We must receive comments on this proposed AD by April 9, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Sutherland, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6533; fax: 425–917–6590; email: *James.Sutherland@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2012–0149; Directorate Identifier 2011–NM–255–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report indicating that, on the affected airplanes, scribe lines may have been inadvertently made in the overlapped skin in lap joints if a sharp tool was used to remove the maskant from the aluminum skin panels during assembly of the affected lap joints. During fatigue testing of Model 777 airplanes, lap joint cracks were found, and analysis indicated that those cracks initiated at scribe lines that were made during production when maskant was removed from the affected skin panels. Such fatigue cracking, if not detected and corrected, could grow large and cause sudden decompression and the inability to sustain limit flight and pressure loads.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 777–53A0043, dated November 9, 2011. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2012–0149.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require repetitive external phased-array ultrasonic inspections to detect cracks of the affected fuselage skin lap splices in Sections 41, 43, and 44, as applicable, and repair if necessary.

Difference Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 777–53A0043, dated November 9, 2011, specifies that one way to install a repair is to use "other approved methods." However, this proposed AD requires that the repair be done using a method approved in accordance with the procedures specified in paragraph (i) of this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 46 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections for Group 1 airplanes (25 airplanes).	126 work-hours × $85 per hour = $10,710 per inspection cycle.	$0	$10,710 per inspection cycle ...	$267,750 per inspection cycle.
Inspections for Group 2 airplanes (21 airplanes).	50 work-hours × $85 per hour = $4,250 per inspection cycle.	0	$4,250 per inspection cycle	$89,250 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0149; Directorate Identifier 2011–NM–255–AD.

(a) Comments Due Date

We must receive comments by April 9, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–53A0043, dated November 9, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of fatigue cracks in the lap joints, which initiated at scribe lines that were made during production when maskant was removed from the affected skin panels. We are issuing this AD to detect and correct such fatigue cracking, which, if not detected and corrected, could grow large and cause sudden decompression and the inability to sustain limit flight and pressure loads.

(f) Compliance

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

(g) Inspections and Repair

Except as provided by paragraph (h)(1) of this AD, at the applicable time identified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–53A0043, dated November 9, 2011: Do external phased-array ultrasonic inspections to detect cracks of the affected fuselage skin lap splices in Sections 41, 43, and 44, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0043, dated November 9, 2011. If any crack is found, before further flight, repair in accordance with Boeing Alert Service Bulletin 777–53A0043, dated November 9, 2011; except as required by paragraph (h)(2) of this AD. Repeat the inspections of unrepaired areas thereafter at intervals not to exceed 4,200 flight cycles.

(h) Exception to Service Information

(1) Where Boeing Alert Service Bulletin 777–53A0043, dated November 9, 2011, specifies a compliance time "after the original issue date on this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 777–53A0043, dated November 9, 2011, specifies that "other approved methods" can be used to install a repair, this AD requires that the repair be done using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact James Sutherland, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6533; fax: 425–917–6590; email: *James.Sutherland@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may also review the referenced service information in the docket at *www.regulations.gov* (refer to Docket No. FAA–2012–0149). You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 10, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4002 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0146; Directorate Identifier 2011–NM–115–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This proposed AD was prompted by reports of deformation at the neck of the pressure regulator body on the oxygen cylinder and regulator assemblies (CRAs), and an electrical wiring harness in the area of the oxygen cylinder had no protective conduit sleeving. This proposed AD would require inspecting to determine if certain oxygen pressure regulators are installed and replacing oxygen CRAs containing pressure regulators that do not meet the required material properties. This proposed AD would also require inspecting for damaged wiring and repairing or replacing wiring if necessary. We are proposing this AD to prevent rupture of the oxygen cylinder, which in the case of cabin depressurization, oxygen would not be available when required; and to detect and correct unprotected wiring that could chafe against the oxygen system components or surrounding structure in the area, which could lead to electrical arcing and an oxygen-fed fire.

DATES: We must receive comments on this proposed AD by April 9, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2012–0146; Directorate Identifier 2011–NM–115–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), has issued Canadian Airworthiness Directive CF–2011–11, dated May 25, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA) of a BD–700–1A11 aeroplane.
>
> An investigation by the vendor, Avox Systems Inc., revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen would not be available when required.
>
> Although there have been no reported failures to date on any CL–600–2B16 aeroplanes, oxygen pressure regulators, Part Numbers (P/N) 806370–12, could be part of the affected batches.
>
> It has also been found that the electrical wiring harness in the area of the oxygen cylinder has been installed without protection. Unprotected wiring could chafe against the oxygen system components or surrounding structure in the area, which could lead to electrical arcing and an oxygen fed fire.
>
> This [TCCA] directive mandates [an inspection to determine if a certain oxygen CRA is installed and] the replacement of oxygen CRAs containing pressure regulators that do not meet the required material properties and to [do a general visual inspection of] and protect the affected wiring.

Corrective actions include repairing or replacing any damaged wiring. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 605–24–005, dated January 31, 2011; and Bombardier Service Bulletin 605–35–001, Revision 01, dated February 28, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

This proposed AD differs from the MCAI and/or service information as follows: The MCAI and service information do not specify corrective actions if damaged wiring is found; this proposed AD requires repairing or replacing any damaged wiring. This proposed AD also includes serial numbers (S/N) 5824 and subsequent in the applicability. Those airplanes are included in paragraph (j) of the proposed AD, which prohibits the installation of certain regulators.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 72 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,120, or $85 per product.

In addition, we estimate that certain follow-on actions (wiring protection) would take about 2 work-hours and require parts costing $0, for a cost of $170 per product. We have no way of determining the number of products that may need these actions.

We have received no definitive data that would enable us to provide cost estimates for certain other on-condition actions (repairing or replacing damaged wiring) specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

> **Bombardier, Inc.:** Docket No. FAA–2012–0146; Directorate Identifier 2011–NM–115–AD.
>
> **(a) Comments Due Date**
>
> We must receive comments by April 9, 2012.
>
> **(b) Affected ADs**
>
> None.
>
> **(c) Applicability**
>
> This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, & CL–604 Variants) airplanes; certificated in any category; serial numbers 5701 through 5802 inclusive, 5804 through 5808 inclusive, 5810 through 5816 inclusive, 5819, 5822, 5823 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Codes 24: Electrical power; and 35: Oxygen.

(e) Reason

This AD was prompted by reports of deformation at the neck of the pressure regulator body on the oxygen cylinder and regulator assemblies (CRAs), and an electrical wiring harness in the area of the oxygen cylinder had no protective conduit sleeving. We are issuing this AD to prevent rupture of the oxygen cylinder, which in the case of cabin depressurization, oxygen would not be available when required; and to detect and correct unprotected wiring that could chafe against the oxygen system components or surrounding structure in the area, which could lead to electrical arcing and an oxygen-fed fire.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspect and Replace the Oxygen CRA

For airplanes with serial numbers 5701 through 5802 inclusive, 5804 through 5808 inclusive, 5810 through 5816 inclusive, 5819, 5822, and 5823: Within 750 flight hours after the effective date of this AD, but no later than 6 months after the effective date of this AD, inspect the serial number of oxygen pressure regulators having part number (P/N) 806370–12, in accordance with the Accomplishment Instructions, Section 2.B.(3), of Bombardier Service Bulletin 605–35–001, Revision 01, dated February 28, 2011. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the oxygen pressure regulator can be conclusively determined from that review.

(1) If any serial number is found that is listed in table 2 of Bombardier Service Bulletin 605–35–001, Revision 01, dated February 28, 2011, before further flight, replace the affected oxygen CRA in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 605–35–001, Revision 01, dated February 28, 2011.

(2) If any serial number is found that is not listed in table 2 of Bombardier Service Bulletin 605–35–001, Revision 01, dated February 28, 2011, no further action is required by this paragraph.

(h) Inspection and Corrective Action of the Oxygen CRA Wiring Harness

For airplanes with serial numbers 5701 through 5778 inclusive, 5780 through 5796 inclusive, 5798, 5800 through 5802 inclusive, 5804, 5805, 5808, 5811, and 5813: At the compliance times specified in paragraphs (h)(1) and (h)(2) of this AD, do a detailed inspection for damaged wiring (i.e., signs of damaged insulation, abrasion, or chafing) of the electrical wiring harness for the oxygen CRA, and protect the electrical wiring harness, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 605–24–005, dated January 31, 2011. If any damaged wiring is found, before further flight, repair or replace any damaged wiring in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(1) For airplanes on which the oxygen CRA must be replaced as required by paragraph (g)(1) of this AD: At the time the oxygen CRA is replaced.

(2) For airplanes other than those identified in paragraph (h)(1) of this AD: Within 800 flight hours after the effective date of this AD.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions accomplished before the effective date of this AD accordance with Bombardier Service Bulletin 605–35–001, dated January 31, 2011, are considered acceptable for compliance with the corresponding actions specified in this AD.

(j) Parts Installation

For all airplanes: As of the effective date of this AD, no person may install an oxygen pressure regulator (P/N 806370–12) having any serial number listed in table 2 of Bombardier Service Bulletin 605–35–001, Revision 01, dated February 28, 2011, on any airplane, unless a suffix "-A" is beside the serial number.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(l) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–11, dated May 25, 2011, and the service bulletins identified in paragraphs (l)(1) and (l)(2) of this AD, for related information.

(1) Bombardier Service Bulletin 605–24–005, dated January 31, 2011.

(2) Bombardier Service Bulletin 605–35–001, Revision 01, dated February 28, 2011.

Issued in Renton, Washington, on February 7, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4160 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–037]

Standards for Business Practices for Interstate Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations at 18 CFR 284.12 to incorporate by reference the latest version (Version 2.0) of business practice standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines.[1] The Commission also proposes to provide guidance on the standards the Commission applies to requests for waivers or extensions of time to comply with NAESB Standards. These standards can be obtained from NAESB at 1301 Fannin, Suite 2350, Houston, TX 77002, telephone: (713) 356–0060, *http://www.naesb.org,* and are available for viewing in the Commission's Public Reference Room.

DATES: Comments are due March 23, 2012.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing through http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

[1] The Commission's proposal includes incorporation of the minor corrections and errata to the Version 2.0 Standards made by NAESB and reported to the Commission on June 28, 2011, October 11, 2011 and December 22, 2011.

FOR FURTHER INFORMATION CONTACT:

Adam Bednarczyk (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6444.

Tony Dobbins (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6630.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

138 FERC ¶ 61,124

February 16, 2012.

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations at 18 CFR 284.12 to incorporate by reference the latest version (Version 2.0) of business practice standards adopted by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines. The Commission also proposes to provide guidance on the standards the Commission applies to requests for waivers or extensions of time to comply with NAESB Standards. The Commission's proposal includes incorporation of the minor corrections and errata made by NAESB and reported to the Commission on June 28, 2011, October 11, 2011, and December 22, 2011.

I. Background

2. Since 1996, the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate natural gas pipelines to create a more integrated and efficient pipeline grid. These regulations have been promulgated in the Order No. 587 series of orders,[2] wherein the Commission has incorporated by reference standards for interstate natural gas pipeline business practices and electronic communications that were developed and adopted by NAESB's WGQ. Upon incorporation by reference, this version of these standards will become part of the Commission's regulations and compliance by interstate natural gas pipelines will become mandatory.

3. On March 4, 2011, NAESB filed a report informing the Commission that it had adopted and ratified Version 2.0 of its business practice standards applicable to natural gas pipelines. The Version 2.0 Standards revised the Version 1.9 Standards to include: (1) Standards to support gas-electric interdependency; (2) standards created for Capacity Release redesign due to the elimination of Electronic Data Interchange (EDI) for Capacity Release Upload information; (3) standards to support the Electronic Delivery Mechanism (EDM); (4) standards to support the Customer Security Administration (CSA) Process; (5) standards for pipeline postings of information regarding waste heat; and (6) minor technical maintenance revisions designed to more efficiently process wholesale natural gas transactions.

4. On June 28, 2011, NAESB filed a report informing the Commission that it had made modifications to the NAESB WGQ Version 1.9 and 2.0 Standards to correct various minor errors. The errata corrections make minor revisions to the NAESB WGQ Standards and Data Elements including revisions to the: (1) Datasets for Additional Standards; (2) Nomination Related Datasets; (3) Flowing Gas Related Standards; (4) Invoicing Related Datasets; (5) EDM Related Standards; and (6) Capacity Release Related Standards and Datasets.

5. Further, on October 11, 2011, NAESB filed a report informing the Commission that it had made additional modifications to the NAESB WGQ Version 2.0 Standards to correct various minor errors in the Nominations Related and Capacity Release Related Datasets.

6. Finally, on December 22, 2011, NAESB filed a report informing the Commission that it had made additional modifications to the NAESB WGQ Version 1.9 and 2.0 Standards to correct various minor errors. The errata corrections make minor revisions to the NAESB WGQ Standards and Datasets including revisions to the: (1) Nominations Related Datasets; (2) Capacity Release Related Datasets; and (3) Quadrant Electronic Delivery Mechanism Related Standards.

II. Significant Changes and Additions Contained in the Version 2.0 Standards

A. Gas-Electric Communications

7. In Order Nos. 698 and 698–A,[3] the Commission incorporated by reference the NAESB Wholesale Electric Quadrant (WEQ) and WGQ Gas/Electric Coordination Standards. These standards were adopted to ensure that pipelines have relevant planning information to assist in maintaining the operational integrity and reliability of pipeline service, as well as to provide gas-fired power plant operators with information as to whether hourly flow deviations can be honored. The standards also required electric transmission operators and power plant operators to sign up to receive operational flow order notices from connecting pipelines as well as other critical notices. These standards ensured that operators of the electric grid could stay abreast of developments involving natural gas pipelines that can affect the reliability of electric service. The standards required that, upon request, a gas-fired power plant operator must provide to the appropriate independent electric balancing authority or electric reliability coordinator pertinent information regarding its service levels for gas transportation (firm or interruptible) and for gas supply (firm, fixed or variable quantity, or interruptible).[4]

8. In the NAESB WGQ Version 2.0 Standards, NAESB modified and developed additional standards to further enhance that coordination. NAESB made modifications to its WGQ Standards 4.3.28, 4.3.29, and 5.3.38 and developed new Standards 5.3.70 and 5.3.71 to enhance the clarity of the content and format of critical, non-critical, and planned service outage notices issued by pipelines. These modifications were made to allow Transportation Service Providers the flexibility to communicate additional clarity beyond the currently defined notice types through the addition of 15 new notice types. The expansion from the current 12 notice types to 27 notice types increases the ability of pipelines to detail the subject matter of the notices.[5] The expansion also allows the notices to be easily identified and sorted, thereby promoting easier prioritization and organization of these

[2] This series of orders began with the Commission's issuance of *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587, FERC Stats. & Regs. ¶ 31,038 (1996).

[3] *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities*, Order No. 698, FERC Stats. & Regs. ¶ 31,251, *order on clarification and reh'g*, Order No. 698–A, 121 FERC ¶ 61,264 (2007).

[4] Order No. 698, FERC Stats. & Regs. ¶ 31,251 at P 12–13.

[5] The new Version 2.0 Notice Types subjects are: Computer System Status; Customer Services Update; Gas Quality; Imbalance Trading; Location Change; Operational Alert; Over-Under Performance; Pipeline Conditions; Planned Service Outages; Storage; Weather Alert; Capacity Release; Cash Out (cash liquidation of transportation imbalances); PTR (Plant Thermal Reduction) Percentage (this is the amount a nomination is to be reduced due to natural gas processing); and Scheduling Alert (information regarding scheduled gas quantities and potential revisions and/or adjustments).

communications. Some of the notices that may be of particular relevance to coordination between the gas and electric industries are: Operational alerts; over-under performance; pipeline conditions; planned service outages; storage and weather alerts.

9. NAESB modified the existing gas-electric coordination WGQ Standards 0.2.1 through 0.2.3, 0.3.11 through 0.3.15; and created a new Standard 0.2.4 to further define the roles and responsibilities of each participant under the Gas/Electric Operational Communication Standards promulgated in Order No. 698. Specifically, NAESB modified the WGQ Standards in order to define the terms Reliability Coordinator and Power Plant Gas Coordinator to replace existing terminology of Regional Transmission Organizations, Independent System Operators, any other appropriate independent transmission operators, and Power Plant Operators respectively. NAESB modified WGQ Standard 0.3.14 to change the parties to whom pipelines are required to provide notification of operational flow orders and other critical notices. Pipelines are now required to provide Balancing Authorities and/or Reliability Coordinators, and Power Plant Gas Coordinators such information.

B. Capacity Release Upload Transactions

10. In the NAESB WGQ Version 2.0 Standards, NAESB sought to modify electronic capacity release transaction standards to reflect NAESB's elimination of the largely unused EDI requirements for Capacity Release Upload information. NAESB added two standards related to notices provided by Transmission Service Providers and one standard related to error messages. The NAESB WGQ Version 2.0 Standards also add four new capacity release standard datasets to replace fourteen Version 1.9 Datasets that NAESB deleted in an effort to restructure and simplify capacity release transactional information.

C. Electronic Delivery Mechanism (EDM)

11. In the NAESB WGQ Version 2.0 Standards, NAESB adopted several standards to ensure the consistency of Transportation Service Provider Web site data labels as well as the ability to provide Informational Postings report downloads in a comma-separated-value (CSV) file format. These changes were undertaken to ensure that NAESB's technical standards remain consistent with current technical practices.

D. Customer Security Administration

12. In the NAESB WGQ Version 2.0 Standards, NAESB adopted Standard 4.3.100 to support the CSA processes. This new standard establishes a timeline for a Transportation Service Provider to respond to a request from a service requester for information, such as user name and security privileges, regarding those parties permitted to access the Transportation Service Provider's "Customer Activities" Web site on the service requester's behalf. The new standard also establishes the number of representatives a service requester can authorize to receive such information and details the related user management responsibilities of the service requester.

E. Waste Heat Recovery Feasibility

13. NAESB sought to facilitate the Commission's FY 2009–2014 Strategic Plan [6] objective of evaluating the feasibility of installing waste heat recovery systems as a way to promote the efficient design and operation of jurisdictional natural gas facilities. NAESB WGQ Version 2.0 Standard 4.3.23 specifies the location where information regarding the feasibility of waste heat recovery is to be posted on the Informational Postings sections of pipelines' Web sites.

F. Operationally Available and Unsubscribed Capacity

14. In the NAESB WGQ Version 2.0 Standards, NAESB added several new Standards, 0.3.18 through 0.3.22, and replaced an existing Dataset 5.4.13 with new Datasets 0.4.2 and 0.4.3, to further specify the information on operationally available and unsubscribed capacity that pipelines disseminate. NAESB indicates that these standards are intended to specify the Business Practice Standards and Dataset requirements for reporting operationally available and unsubscribed capacity. NAESB included these new Business Practice Standards in a new section entitled "Operating Capacity and Unsubscribed" in its Business Practice Standards for Additional Standards.

G. Clean Up and Miscellaneous Revisions

15. In the NAESB WGQ Version 2.0 Standards, NAESB also continued the process of making minor clarifications and corrections to existing standards including: (1) Revising the formatting, appearance, or descriptions; (2) clarifying or correcting code values to tables; and (3) making minor non-substantive changes.

[6] Federal Energy Regulatory Commission, Strategic Plan, FY 2009–2014 at 25. *http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf.*

III. Discussion

A. Proposed Action

16. In this NOPR, the Commission proposes to incorporate by reference in its regulations Version 2.0 of the NAESB WGQ's consensus business practice standards,[7] with certain exceptions.[8] Adoption of the Version 2.0 Standards will continue the process of updating and improving NAESB's business practice standards for the benefit of the wholesale gas market.

17. As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry.[9] Moreover, because the industry has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires Federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities.[10]

[7] In its Version 2.0 Standards, the WGQ made the following changes to its Version 1.9 Standards:

a. It revised Principle 4.1.32; Definitions 0.2.1, 0.2.2, 0.2.3, 5.2.1, 5.2.4, and 5.2.5; Standards 0.3.11 through 0.3.15, 2.3.34, 4.3.16, 4.3.23, 4.3.28, 4.3.29, 4.3.54, 5.3.1 through 5.3.14, 5.3.16, 5.3.19 through 5.3.21, 5.3.24 through 5.3.27, 5.3.31 through 5.3.33, 5.3.38, 5.3.42, 5.3.48, 5.3.50, 5.3.51, 5.3.60, 5.3.62, 5.3.62a, and 5.3.63 through 5.3.69; and Datasets 1.4.1 through 1.4.6, 2.4.1, 2.4.3, 2.4.4, 2.4.6, 2.4.7, 3.4.1, 3.4.4, 5.4.14 through 5.4.17, and 5.4.20 through 5.4.22.

b. It added Definition 0.2.4; Standards 0.3.18 through 0.3.22, 4.3.100 through 4.3.102, 5.3.70 through 5.3.72; and Datasets 0.4.2, 0.4.3, and 5.4.24 through 5.4.27.

c. It deleted Standards 5.3.17, 5.3.30, 5.3.43, and 5.3.61; and Datasets 5.4.1 through 5.4.13, 5.4.18, and 5.4.19.

[8] We discuss in sub-section A.1 below, those NAESB WGQ Version 2.0 Standards that we propose not to incorporate by reference.

[9] The NAESB process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—Distributors, End Users, Pipelines, Producers, and Services (including marketers and computer service providers). For final approval, 67 percent of the WGQ's general membership voting must ratify the standards.

[10] Pub. L. 104–113, section 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272, note (1997).

1. Proposal Not To Adopt Certain Standards

a. Standards Not Adopted in Previous Rulemakings

18. The Commission is continuing its past practice and is not proposing to incorporate by reference Standards 4.3.4 and 10.3.2, because they are inconsistent with the Commission's record retention requirement in 18 CFR 284.12(b)(3)(v).[11] Also, consistent with past practice, we are not incorporating NAESB's interpretation of its standards into the Commission's regulations because, while interpretations may provide useful guidance, they are not determinative and we will not require pipelines to comply with NAESB's interpretations.[12] Likewise, consistent with prior practice we will not incorporate optional contracts into our regulations because the Commission does not require the use of these contracts.[13] In addition, the Commission is not proposing to incorporate by reference the WEQ/WGQ eTariff Related Standards because the Commission has already adopted standards and protocols for electronic tariff filings based on the NAESB Standards.[14]

b. Standards 0.3.19 and 0.3.21

19. NAESB adopted new Standards[15] and Datasets[16] in Version 2.0 designed to specify the business practices for the dissemination of operationally available and unsubscribed capacity information as required under section 284.13 of the Commission's regulations. The new NAESB WGQ Standards are intended to provide industry-wide standardization of certain data elements required to be provided as part of the Commission's reporting requirements for interstate pipelines. However, two of the proposed standards, WGQ Standards 0.3.19 and 0.3.21, appear to be inconsistent with the Commission's posting regulations.

20. NAESB WGQ Standard 0.3.19 states:

> Operationally Available Capacity (OAC), Operating Capacity (OPC) and Total Scheduled Quantity (TSQ) are associated information and should be reported at the same level. Transportation Service Providers should report OAC, OPC and TSQ at, at least one of, point, segment or zone level.

21. While this standard allows the pipeline to choose whether to post Operationally Available Capacity, Operating Capacity, and Total Scheduled Quantity at either a point, segment or zone level, section 284.13(d) [17] of our regulations does not permit the pipeline to limit the posting to a point, segment, or zone, but requires posting at all receipt and delivery points and on the mainline. Section 284.13(d) states that the pipeline must post "information relevant to the availability of all transportation services whenever capacity is scheduled, including, but not limited to, the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields." Because the NAESB standards are intended to implement Commission posting requirements, we are concerned about inconsistencies between those standards and the regulations. We therefore are proposing not to incorporate by reference Standard 0.3.19 and pipelines are expected to continue to post information in accordance with § 284.13 of the Commission's regulations.

22. NAESB WGQ Standard 0.3.21 states:

> The Total Scheduled Quantity and the Operationally Available Capacity information should be updated by the Transportation Service Provider to reflect scheduling changes and be reported promptly following the scheduling deadline associated with the timely and evening nominations cycles.

While this standard requires the posting of information only at the timely and evening nominations cycles, section 284.13(d) does not limit the posting to only two cycles but requires the posting of capacity availability and scheduled capacity "whenever capacity is scheduled." This would include postings for the two intra-day cycles during the gas day.[18]

23. We therefore are proposing not to incorporate by reference Standard 0.3.21. While NAESB is considering a revision to Standard 0.3.21, pipelines are expected to continue to adhere to the regulations and post available capacity at the four intra-day nomination opportunities. In addition, we note that some pipelines are providing additional nomination opportunities (such as hourly nominations) under certain rate schedules. The regulation requires posting "whenever capacity is scheduled," which would include posting for these additional nomination opportunities as well as posting for the standard four nomination periods.

B. Proposed Implementation Procedures

24. The Commission proposes that natural gas pipelines be required to implement the NAESB WGQ Version 2.0 Standards in accordance with the following schedule. We propose to require compliance with the NAESB WGQ Version 2.0 Standards beginning on the first day of the month after the fourth full month following issuance of the final rule. So if the final rule were issued on February 17, 2012, compliance would be required beginning on July 1, 2012. Based on past practice, we are proposing this implementation schedule to give the natural gas pipelines subject to these standards adequate time to implement these changes. In addition, the Commission proposes that pipelines be required to file tariff records to reflect the changed standards at least two months before the implementation date.

25. The Commission also proposes to revise the compliance filing requirements to increase the transparency of the pipelines' incorporation by reference of the NAESB WGQ Standards so that shippers and the Commission will know which tariff provisions implements each standard as well as the status of each standard.

(1) The pipelines should designate a single tariff section under which every NAESB standard is listed.[19]

(2) For each standard, the pipeline would indicate in the tariff section listing all the NAESB standards:

(a) Whether the standard is incorporated by reference;

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[11] *See, e.g., Standards for Business Practices for Interstate Natural Gas Pipelines*, Final Rule, Order No. 587–T, FERC Stats. & Regs. ¶ 31,289, at P 5 & n. 9 (2009).

[12] *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676–E, FERC Stats. & Regs. ¶ 31,299, at n. 16 (2009).

[13] *Id.*

[14] *See Electronic Tariff Filings*, FERC Stats. & Regs. ¶ 31,276 (2008).

[15] NAESB WGQ Version 2.0 Standards 0.3.18 through 0.3.22.

[16] NAESB WGQ Version 2.0 Datasets 0.4.2 and 0.4.3 were created to replace deleted NAESB WGQ Version 1.9 Dataset 5.4.13 (Operationally Available and Unsubscribed Capacity).

[17] 18 CFR 284.13(d). Section 284.13(d) states in relevant part:

> (d) Capacity and flow information. (1) An interstate pipeline must provide on its Internet web site and in downloadable file formats, in conformity with § 284.12 of this part, equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled, including, but not limited to, the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system, the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.

[18] NAESB Standard 1.3.2 established four nomination cycles (Timely, Evening, Intra-day 1, and Intra-Day 2).

[19] This section should be a separate tariff record under the Commission's electronic tariff filing requirement and be filed electronically using the eTariff portal using the Type of Filing Code 580.

(b) For those standards not incorporated by reference, the tariff provision that complies with the standard; [20] and

(c) An indication as to whether the pipeline has been granted a waiver, extension of time, or other variance with respect to compliance with the standard.[21]

(3) If the pipeline is requesting a continuation of an existing waiver or extension of time, it must include a table in its transmittal letter that indicates the standard for which a waiver or extension of time was granted, and the docket number or order citation to the proceeding in which the waiver or extension was granted.

This approach would give Commission staff and all shippers a common location that identifies the way the pipeline is incorporating all the NAESB WGQ Standards and the standards with which it is required to comply. The Commission will post on its eLibrary Web site (under Docket No. RM96–1–037) a sample tariff format, to provide filers an illustrative example to aid them in preparing their compliance filings.[22]

C. Waivers and Extensions of Time

26. In previous compliance proceedings, there has been a marked increase in the number of requests for waivers or for extensions of time to comply with standards. The Commission's orders on these requests have developed a set of general principles which the Commission intends to follow in reviewing such requests in the future.[23] The following will help to clarify Commission policy regarding requests for waivers and extensions of time as well as the information that must be included with all such requests.

(1) All waivers and extensions of time are limited to the individual set of NAESB standards being adopted (in this case NAESB WGQ's Version 2.0 Standards). Pipelines will need to seek renewal of any such waivers or extensions for each version of the standards the Commission adopts.[24]

(2) Waivers or extensions of time will not be granted for standards that merely describe the process by which a pipeline must perform a business function, if it performs that function, where the standard does not require the pipeline to perform the business function.[25] In such a case, as long as the pipeline does not perform the business function, it is not required to follow the standard and hence requires no waiver or extension of time. If, however, the pipeline revises its tariff to perform the business function, the standard(s) will already be in the tariff and the pipeline will be required to comply with the standard(s).[26]

(3) If a pipeline is seeking a renewal of a waiver or extension of time request, it must provide a current justification for the request and must include a citation to an order or the docket number of the proceeding in which the initial waiver or extension of time was granted.[27]

(4) In cases in which pipelines maintain they should not be required to incur the costs of implementing standards shippers are not interested in utilizing, waivers ordinarily will not be granted. Instead, the approach to these requests will be to grant the pipeline an extension of time for compliance until 60 days after the pipeline receives a request to comply with the standard.[28] Waivers are justified only when the pipeline can demonstrate that there is good cause not to require the implementation of a standard even though shippers want to use the standard.

(5) The Commission generally will not entertain waiver or extension of time requests for NAESB WGQ Definitions (x.2.z Standards). The NAESB WGQ Definitions specify and elucidate specific terms of generally applicable business practices and do not require a pipeline to perform any action or incur expense to comply which such Definitions.

27. To provide guidance to pipelines in filing requests for waivers or extensions of time, the Commission also will explain its general policy regarding waivers of the four general categories of NAESB standards: (1) Business practice standards; (2) requirements to conduct business electronically using the Internet (Internet Business Standards); (3) Commission Internet posting requirements (Internet Posting Standards); and (4) requirements to conduct computer-to-computer transactions using EDI. It is important for pipelines to identify clearly in their filings the specific standards from which they are seeking waivers or extensions of time. In particular, pipelines need to be clear as to whether they are requesting waivers of the Internet Requirements or the EDI requirements.

(1) *Waivers or Extensions of Time to Comply with Business Practice Standards.* Waivers or extensions of time to comply with business practice standards will generally be denied because these standards establish the basic principles on which business is required to be conducted. Nonetheless, if a pipeline believes such a waiver or extension of time to comply is justified, it must detail specific reasons why it seeks the waiver or extension of time to comply with the standard and address alternative methods by which it could comply with the principle of the standard.[29]

(2) *Waivers or Extensions of Time to Comply with the Internet Business Standards.* Waivers or extensions of time to comply with the requirement to conduct business over the Internet generally will be granted based on a pipeline's individual circumstances, such as the size of the pipeline, the number of shippers, its ability to provide electronic services, the demand for such services, and alternative means by which the pipeline conducts the business practice. For smaller pipelines, the Commission has granted waivers of the Internet Business Standards when such pipelines have shown that complying with such standards would

[20] For example, pipelines are required to include the full text of the NAESB nomination timeline standards (WGQ Standards 1.3.2(i–v) and 5.3.2) in their tariffs. *Standards for Business Practices for Interstate Natural Gas Pipelines*, Final Rule, Order No. 587–U, FERC Stats. & Regs. ¶ 31,307, at P 39 & n. 42 (2010). The pipeline would indicate which tariff provision complies with each of these standards.

[21] Shippers can use the Commission's electronic tariff system to locate the tariff record containing the NAESB standards, which will indicate the docket in which any waiver or extension of time was granted.

[22] *http://www.ferc.gov/docs-filing/elibrary.asp.*

[23] *See Standards for Business Practices for Interstate Natural Gas Pipelines, complionce order*, 133 FERC ¶ 61,096, at P 4 (October 28 Order), *further compliance order*, 133 FERC ¶ 61,185, at P 4 (2010) (November 30 Order); *B–R Pipeline Co.*, 128 FERC ¶ 61,126 (2009) (*B–R Pipeline*).

[24] In *B–R Pipeline*, 128 FERC ¶ 61,126 at P 6, the Commission stated that "each time the Commission adopts new versions of [the] standards * * * pipelines must request waiver [or extension of time] of the new standards."

[25] October 28 Order, 133 FERC ¶ 61,096 at P 9; November 30 Order, 133 FERC ¶ 61,185 at P 7.

[26] As an example, Standard 4.3.96 requires pipelines to provide hourly gas quality information "to the extent that the TSP is required to do so in its tariff or general terms and conditions, a settlement agreement, or by order of an applicable regulatory authority." A pipeline that does not provide hourly gas quality information, therefore, does not require a waiver or extension of time for compliance with this standard, because the standard imposes no obligation on the pipeline to comply with the standard until it provides hourly gas quality information. *See* October 28 Order, 133 FERC ¶ 61,096 at P 9.

[27] *See* Order No. 587–U, FERC Stats. & Regs. ¶ 31,307 at P 38–39.

[28] *See T.W. Phillips Pipeline Corp.*, 137 FERC ¶ 61,104, at P 11 (2011).

[29] *See Carolina Gas Transmission Corp.*, 131 FERC ¶ 61,211, at P 4 (2010); *MoGas Pipeline LLC*, 131 FERC ¶ 61,251, at P 7 (2010); *Granite Stote Gas Transmission, Inc.*, 132 FERC ¶ 61,262, at P 8 (2010) (requiring small pipelines to use manual methods of implementing index-based capacity releases).

prove unduly burdensome.[30] For larger pipelines, the Commission has rarely granted waivers or extensions of time to comply with the Internet Business Standards.[31] However, if a pipeline can demonstrate that shippers are not utilizing a standard, then the Commission will grant an extension of time to comply. Such an extension of time ensures that pipelines do not needlessly have to spend money revamping computer services that shippers do not use while, at the same time, ensuring that shippers have access to such services if they need them.

(3) *Waivers or Extensions of Time to Comply with Internet Posting Standards.* The Commission rarely grants waivers or extensions of time to comply with the posting requirements because posting of this information is required by the Commission's regulations. The cost of maintaining and posting information on an Internet Web site is not great even for smaller pipelines.

(4) *Waivers or Extensions of Time to Comply with EDI standards.* The Commission generally will grant waivers or extensions of time to comply with the EDI requirements based on a pipeline's individual circumstances, such as the size of the pipeline, the number of shippers, its ability to provide electronic services, the demand for such services, and alternative means by which the pipeline conducts the business practice. For smaller pipelines, the Commission generally grants waivers of the EDI Standards when such pipelines have shown that complying with such standards would prove unduly burdensome.[32] For larger pipelines on which shippers are not utilizing a standard, in lieu of an outright waiver, the Commission generally will grant an extension of time until such time as a request is made to use EDI.[33] As with the EDI requirements relating to capacity releases,[34] NAESB also can review whether certain business transactions still need to be available through EDI, given the lack of usage, and pipelines can also seek such revisions from NAESB for EDI standards whose upkeep no longer appears to be cost justified.

IV. Notice of Use of Voluntary Consensus Standards

28. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by the WGQ.

V. Information Collection Statement

29. The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs to implement the WGQ's definitions and business practice standards for interstate natural gas pipelines and electronic communication protocols. The burden estimates are primarily related to start-up to implement these standards and regulations and will not result in ongoing costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–545[35]	161	1	10	1,610
FERC–549C[36]	161	1	22	3,542
Totals				5,152

Total Annual Hours for Collections (Reporting and Recordkeeping, if appropriate) = 5,152.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:[37]

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$94,990	$208,987
Annualized Costs (Operations & Maintenance)	N/A	N/A
Total Annualized Costs	94,990	208,987

Total Cost for all Respondents = $303,968.

30. OMB regulations[38] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: FERC–545, Gas Pipeline Rates: Rates Change (Non-Formal); FERC–

[30] October 28 Order, 133 FERC ¶ 61,096 at P 17–18; November 30 Order, 133 FERC ¶ 61,185 at P 9.

[31] October 28 Order, 133 FERC ¶ 61,096 at P 17–18.

[32] *See supra* n. 29.

[33] *See supra* n. 30; *Texas Eastern Transmission LP.*, 100 FERC ¶ 61,364 (2002) (granting an extension of time for unused EDI datasets, but requiring compliance with datasets for publicly available capacity release information).

[34] *See supra* P 10.

[35] Data collection FERC–545 covers rate change filings made by natural gas pipelines, including tariff changes (OMB Control No. 1902–0154).

[36] Data collection FERC–549C covers Standards for Business Practices of Interstate Natural Gas Pipelines (OMB Control No. 1902–0174).

[37] The total annualized cost for the two information collections is $303,968. This number is reached by multiplying the total hours to prepare a response (hours) by an hourly wage estimate of $59 (a composite estimate that includes legal, technical and support staff wages and benefits obtained from the Bureau of Labor Statistic data at *http://bls.gov/oes/current/naics3_221000.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm* rates). $303,968 = $59 × 5,152.

[38] 5 CFR 1320.11.

549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control Nos.: 1902–0154, 1902–0174.

Respondents: Business or other for profit, (i.e., Natural Gas Pipelines, applicable to only a few small businesses.) Although the intraday reporting requirements will affect electric plant operators, the Commission is not imposing the reporting burden of adopting these standards on those entities.

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: The proposals in this NOPR would, if implemented, upgrade the Commission's current business practices and communication standards by specifically: (1) Adding and revising standards allowing the elimination of EDI requirements for Capacity Release Upload information; (2) creating and modifying existing information posting requirements for Web sites and browsers; (3) requiring pipelines to provide security information; (4) requiring the posting of information on waste heat recovery feasibility on the Internet; (5) modifying pipeline notice content and creating new pipeline notice types; and (6) creating standards to ensure NAESB data format is consistent with other data reporting via the Internet by using CSV.

The implementation of these data requirements will provide additional transparency to informational posting Web sites and will improve communication standards, including gas-electric communications. The implementation of these standards and regulations will promote the additional efficiency and reliability of the gas industries' operations thereby helping the Commission to carry out its responsibilities under the Natural Gas Act of promoting the efficiency and reliability of the gas industries' operations. In addition, the Commission's Office of Enforcement will use the data for general industry oversight.

Internal Review: The Commission has reviewed the requirements pertaining to business practices of natural gas pipelines and made a preliminary determination that the proposed revisions are necessary to establish more efficient coordination between the gas and electric industries. Requiring such information ensures both a common means of communication and common business practices to limit miscommunication for participants engaged in the sale of electric energy at wholesale and the transportation of natural gas. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industries. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

31. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

32. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, telephone: (202) 395–4638, fax: (202) 395–4718].

VI. Environmental Analysis

33. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[39] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[40] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[41] Therefore, an environmental assessment is unnecessary and has not been prepared as part of this NOPR.

VII. Regulatory Flexibility Act Certification

34. The Regulatory Flexibility Act of 1980 (RFA)[42] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[43] The SBA has established a size standard for pipelines transporting natural gas, stating that a firm is small if its annual receipts are less than $7 million.[44]

35. The regulations proposed here impose requirements only on interstate pipelines, the majority of which are not small businesses. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity. Approximately 161 entities would be potential respondents subject to data collection FERC–545 reporting requirements and also be subject to data collection FERC 549–C reporting requirements. Nearly all of these entities are large entities. For the year 2010 (the most recent year for which information is available), only seven companies not affiliated with larger companies had annual revenues of less than $7 million, which is about three percent of the total universe of potential respondents. Moreover, these requirements are designed to benefit all customers, including small businesses. The Commission estimates that the one-time implementation cost of these standards is $303,968, or $1,888 per company.[45] The Commission does not consider the estimated $1,888 impact per entity to be significant. As noted above, adoption of consensus standards helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Because of that representation and the fact that industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support.

36. Accordingly, pursuant to § 605(b) of the RFA, the regulations proposed herein should not have a significant economic impact on a substantial number of small entities.

VIII. Comment Procedures

37. The Commission invites interested persons to submit written comments on the NAESB business practice standards

[39] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969,* FERC Stats. & Regs. ¶ 30,783 (1987).

[40] 18 CFR 380.4.

[41] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[42] 5 U.S.C. 601–612.

[43] 13 CFR 121.101.

[44] 13 CFR 121.201, subsection 486.

[45] This number is derived by dividing the total cost figure by the number of respondents. $303,968/161 = $1,888.

proposed for incorporation by reference in this NOPR, as well as any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 23, 2012. Comments must refer to Docket No. RM96–1–037, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

38. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

39. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

40. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IX. Document Availability

41. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

42. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

43. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 284

Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend 18 CFR part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended by revising paragraph (a)(1) to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) Additional Standards (General Standards, Creditworthiness Standards, Gas/Electric Operational Communications Standards and Operating Capacity and Unsubscribed Standards) (Version 2.0, November 30, 2010) with the exception of Standards 0.3.19 and 0.3.21;

(ii) Nominations Related Standards (Version 2.0, November 30, 2010, Minor Corrections Applied Through December 2, 2011);

(iii) Flowing Gas Related Standards (Version 2.0, November 30, 2010, Minor Corrections Applied through June 3, 2011);

(iv) Invoicing Related Standards (Version 2.0, November 30, 2010, Minor Corrections Applied Through June 3, 2011);

(v) Quadrant Electronic Delivery Mechanism Related Standards (Version 2.0, November 30, 2010, Minor Corrections Applied Through December 2, 2011) with the exception of Standard 4.3.4;

(vi) Capacity Release Related Standards (Version 2.0, November 30, 2010, Minor Corrections Applied Through January 5, 2012); and

(vii) Internet Electronic Transport Related Standards (Version 2.0, November 30, 2010, Minor Corrections Applied January 2, 2011) with the exception of Standard 10.3.2.

* * * * *

[FR Doc. 2012–4041 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–130302–10]

RIN 1545–BJ69

Reporting of Specified Foreign Financial Assets; Correction

AGENCY: Internal Revenue Service (IRS).

ACTION: Correction notice.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–130302–10), which was published in the **Federal Register** on Monday, December 19, 2011 (76 FR 78594), relating to the reporting of specified foreign financial assets.

DATES: *Effective Date:* December 19, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph S. Henderson (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections are under section 6038 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–130302–10), contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–130302–10), which was the subject of FR Doc. 2011–32254, is corrected as follows:

1. On page 78594, column 2 in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT**, the language "Concerning the proposed regulations, Joseph S. Henderson, (202) 622–3880; concerning submission of comments and/or requests for a hearing, *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622–7180 (not a toll-free numbers)." Is corrected to read "Concerning the proposed regulations, Joseph S. Henderson, (202) 622–3880; concerning submission of comments

and/or requests for a hearing, Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).".

2. On page 78596, column 1, in the preamble, under the caption "Explanation of Provisions", paragraph B. 2., line three, the language "or executor is a bank, financial" is corrected to read "is a bank, financial".

3. On page 78596, column 1, in the preamble, under the caption "Explanation of Provisions", paragraph B.2., the fourth line from the bottom of the first full paragraph, the language "under sections 671 through 679 and the" is corrected to read "under sections 671 through 678 and the".

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Publications and Regulations Br. (Procedure and Administration)

[FR Doc. 2012–3904 Filed 2–21–12; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0958; FRL- 9634–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Amendments to West Virginia's Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of West Virginia (West Virginia). This revision pertains to amendments of West Virginia's Legislative Rule regarding ambient air quality standards (45CSR8-Ambient Air Quality Standards). These amendments incorporate by reference the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0958 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2011–0958, Cristina Fernandez, Associate Director, Office of Air Program Planning, 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–2011–0958. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov*.

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

I. Background

On July 8, 2011, the West Virginia Department of Environmental Protection submitted a SIP revision pertaining to amendments of Legislative Rule 45CSR8—*Ambient Air Quality Standards*. EPA had approved a previous revision of Legislative Rule 45CSR8 on February 10, 2009 (74 FR 6552).

II. Summary of SIP Revision

Amendments to 45CSR8 consist of revisions to section 45–8–1—General, subpart 1.6—Former Rules, in which the effective and filed dates were revised to represent the most recent changes to the NAAQS and the addition of subpart 1.5—Incorporation by Reference to section 45–8–1 to incorporate by reference 40 CFR part 50—National Primary and Secondary Ambient Air Quality Standards and 40 CFR part 53—Ambient Air Monitoring Reference and Equivalent Methods, effective June 1, 2010. The previous version of 45CSR8 merely stated EPA standards for the NAAQS and the revised version incorporates by reference the NAAQS and monitoring reference and equivalency methods. Also, other amendments to 45CSR8 include the addition of section 45–8–3—Adoption of Standards and the removal of section 45–8–2—Anti-Degradation Policy, section 45–8–4—Ambient Air Quality Standards, section 45–8–5—Methods of Measurement, and section 45–8–6—Reference Conditions.

III. Proposed Action

EPA is proposing to approve the West Virginia SIP revision regarding the incorporation by reference of the NAAQS for sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead into 45CSR8—Ambient Air Quality Standards, which was submitted on July 12, 2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, the proposed approval of the West Virginia SIP revision regarding the incorporation by reference of the NAAQS for sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead into 45CSR8–Ambient Air Quality Standards, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: February 6, 2012.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–3918 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0695; FRL–9635–3]

Approval and Promulgation of Implementation Plans; Wisconsin; Volatile Organic Compound Emission Control Measures for Milwaukee and Sheboygan Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 1, 2009, November 16, 2011, and January 26, 2012, the Wisconsin Department of Natural Resources (WDNR) submitted several volatile organic compound (VOC) rules for approval into its State Implementation Plan (SIP). The purpose of these rules is to satisfy the Clean Air Act's (the Act) requirement that states revise their SIPs to include reasonably available control technology (RACT) for sources of VOC emissions in moderate ozone nonattainment areas. Wisconsin's VOC rules provide RACT requirements for the Milwaukee-Racine and Sheboygan 8-hour ozone nonattainment areas. These rules are approvable because they are consistent with the Control Technique Guideline (CTG) documents issued by EPA in 2006 and 2007 and satisfy the RACT requirements of the Act.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0695, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: aburano.douglas@epa.gov.*
- *Fax:* (312) 408–2279.
- *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0695. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov*

index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding federal holidays. We recommend that you telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning & Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@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. What action is EPA taking today?
III. What is the purpose of this action?
IV. What is EPA's analysis of Wisconsin's submitted VOC rules?
V. 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. What action is EPA taking today?

EPA is proposing to approve into the Wisconsin SIP several new and revised VOC rules which set out RACT requirements for categories of VOC sources in two ozone nonattainment areas. These rules correspond to and are consistent with the source categories and control recommendations in the CTGs issued by EPA in 2006 and 2007, as well as EPA RACT guidance for earlier CTGs and source categories not covered by a CTG. Wisconsin adopted new or revised rules for industrial cleaning solvents, flat wood paneling coatings, flexible packaging printing materials, lithographic printing materials, letterpress printing materials, paper, film and foil coatings, metal furniture coatings, large appliance coatings, industrial wastewater collection and treatment operations, and reactor processes and distillation operations in the synthetic organic chemical manufacturing industry (SOCMI).

III. What is the purpose of this action?

The primary purpose of these rules is to satisfy the requirement in section 182(b) of the Act that VOC RACT rules be adopted in nonattainment areas for the source categories covered by the CTG documents issued by EPA in 2006 and 2007. These rule revisions also include previously required SOCMI air oxidation, distillation and reactor regulations as well as an industrial wastewater rule that is required because industrial wastewater is a major non-CTG category for which RACT rules are required. The Milwaukee-Racine and Sheboygan 8-hour ozone nonattainment areas are classified as moderate nonattainment for the 8-hour ozone national ambient air quality standard. *See* 40 CFR 81.31 and 81.314. According to EPA policy, Wisconsin does not need to adopt rules for the source categories covered by the CTGs issued on September 30, 2008, because it submitted a complete 8-hour ozone redesignation request (on September 11, 2009) before September 30, 2009, the date upon which rules consistent with these CTGs were required (according to section 182(b)) to be adopted and submitted as SIP revisions.

Section 182(b)(2) of the Act requires that, for areas classified as moderate or above for ozone nonattainment, states must revise their SIPs to adopt RACT requirements for VOC sources that are covered by CTGs. RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). CTGs are documents issued by EPA to provide states with the EPA's recommendation on how to control the emissions of VOC from a specific type of product or source category in an ozone nonattainment area. A CTG provides information on determining RACT for a source category, including recommendations on control options and enforcement provisions for the category.

IV. What is EPA's analysis of Wisconsin's submitted VOC rules?

EPA has reviewed Wisconsin's new and revised VOC rules for the source categories covered by the 2006 and 2007 CTGs, as well as corrections to rules that were required to be submitted to EPA on September 15, 2006. and proposes to find that these rules are consistent with the control measures, definitions, recordkeeping and test methods in these CTGs and applicable EPA RACT guidance at *www.epa.gov/ttn/naaqs/ozone/ozonetech/#ref*. Therefore EPA is proposing to approve these rules as meeting the RACT requirements in the Act. A brief discussion of these rules follows.

NR 400.02 (54m)—Definitions

A reference to digital printing has been added to Wisconsin's printing regulations. This definition of "digital printing" is approvable because it is a necessary update to the definition and accurately describes digital printing.

NR 419.045—Industrial Wastewater Operations

This new rule applies to sources that have potential VOC emissions greater than or equal to 100 tons per year from industrial wastewater operations and any other non-CTG source category without a final CTG, such as batch operations. The VOC emissions from industrial wastewater collection and treatment processes evaporate from the waste stream when exposed to the ambient air. Consequently, the VOC RACT requirements consist of implementing technologies and work practice standards that combine to substantially suppress the exposure of the VOC-laden waste stream to the ambient air. More specifically, the requirements include:

(1) Oil-water separators must be provided with either a floating cover

equipped with seals or a fixed cover, equipped with a closed vent system vented to a pollution control device;

(2) Each surface impoundment must: (1) Be equipped with a cover or closed vent system which routs the VOCs to a control device or (2) be equipped with a floating flexible membrane cover;

(3) All process drains must be equipped with (1) a water seal or a tightly fitting cap or plug or (2) a cover, and if the cover is vented, the vapors must be routed to a process or through a closed vent system to a control device; and

(4) All junction boxes must be equipped with a tightly fitting solid cover or vented to a process or to a control device.

Also, several definitions have been added to NR 419.02 to clarify the requirements in NR 419.045. These definitions are approvable because they are necessary for implementation of the wastewater rule and they accurately describe the terms that are being defined.

This rule is based on and is consistent with EPA's 1992 draft CTG "Control of VOC Emissions from Industrial Wastewater" and EPA's 1994 "Industrial Wastewater Act."

NR 420.02 (31)—The definition of "Reid vapor pressure" was amended to refer to the appropriate ASTM method.

NR 421—Control of Organic Emissions From Chemical, Coatings, and Rubber Products Manufacturing

As discussed previously, Wisconsin is required to develop industrial cleaning solvent regulations consistent with EPA's 2006 Industrial Cleaning Solvent CTG. Some of these cleaning solvent requirements are contained within source category specific rules and some are contained within a general cleaning solvent regulation (NR 423.037).

Wisconsin has adopted similar cleaning solvent requirements for synthetic resin manufacturing (NR 421.05) and coatings manufacturing (NR 421.06). These requirements are based on the (California) Bay Area Air Quality Management District's rules, which are referenced in EPA's CTG. These requirements apply to cleaning mixing vats, high dispersion mills, grinding mills, tote tanks and roller mills and consist of four options: (1) The solvent or solvent solution used must either contain less than 1.67 pounds VOC per gallon or have a VOC composite partial vapor pressure of less than or equal to 8 millimeters (mm) of mercury (Hg) and the solvent or solvent solution must be collected and stored in closed containers, or (2) several work practices must be implemented, including storing all VOC-containing cleaning materials in closed containers, or (3) the emissions from equipment cleaning must be collected and vented to an emission control system with an overall control efficiency of 80 percent or more on a mass basis, or (4) no more than 60 gallons of virgin solvent per month may be used. In addition, the owner or operator of a facility engaged in wipe cleaning may not use open containers for the storage of solvent or solvent solution used for cleaning or for the storage or disposal of any material impregnated with solvent or solvent solution used for cleaning. Records of the volume of virgin solvent used per month, VOC content in pounds of VOC per gallon or VOC composite pressure are required, if applicable to the option chosen for achieving compliance.

In addition, accurate definitions of "tote tank" and "wipe cleaning" have been added to properly implement these rules.

These cleaning solvent requirements are therefore approvable because they are consistent with EPA guidance and require adequate recordkeeping.

Wisconsin has also adopted SOCMI air oxidation, distillation and reactor regulations in NR 421.07. NR 421.07(1)(a)(intro) specifies that these SOCMI requirements apply to any facility that is located in the Milwaukee-Racine and Sheboygan areas that operates a SOCMI air oxidation unit, distillation operation, or reactor process, as those activities are defined in NR 440.675(2)(c), 440.686(2)(e) and 440.705(2)(o), respectively, to produce any chemical as a product, coproduct, byproduct or intermediate that is listed in the CTGs for these categories.

Affected facilities must comply with subsections (a), (b), or (c), from NR 440.675(3), NR 440.686(3), and NR 440.705(3) for each vent stream.

(a) Reduce emissions of total organic compounds (TOC) (minus methane and ethane) by 98 weight-percent or to a TOC (minus methane and ethane) concentration of 20 parts per million by volume (ppmv) on a dry basis corrected to 3% oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(b) Combust the emissions in a flare that complies with the flare requirements in EPA's new source performance standards; or

(c) Maintain a total resource effectiveness (TRE) index value greater than 1.0 without use of VOC emission control devices. TRE is a measure of the supplemental total resource requirement (or cost-effectiveness) per unit reduction of TOC associated with an individual vent stream, based on vent stream flow rate, emission rate of TOC, net heating value and corrosion properties, whether or not the vent stream is halogenated.

Wisconsin's SOCMI applicability criteria and control requirements are consistent with EPA's CTGs and are therefore approvable.

NR 422—Control of Organic Compound Emissions From Surface Coating, Printing and Asphalt Surfacing Operations

NR 422.02—Definitions—Wisconsin has added several definitions that are needed to properly implement its coating and printing rules. These definitions are necessary and accurate and are therefore approvable.

NR 422.05—Can Coating

Wisconsin has amended its can coating rules to incorporate the industrial solvent cleaning requirements from the industrial solvent cleaning CTG. These requirements apply to any can coating facility with VOC emissions from all industrial cleaning operations which equal or exceed three tons per year on a 12 consecutive month rolling basis.

With the exception of cleaning of heptane-containing end sealant application equipment lines (at 5.8 pounds VOC/gallon) and cleaning of metal can identification ink application equipment (at 7.4 pounds VOC/gallon), cleaning solvent must not exceed a VOC content limit of 0.42 pounds VOC/gallon, as specified in the CTG. Based upon information submitted by the Can Manufacturers Institute, EPA agrees that the higher limits represent RACT. In lieu of complying with these VOC content limits, an alternative limit of 8 mm Hg (and 10 mm Hg for heptane-containing end sealant application equipment lines) is consistent with the CTG.

The CTG also references the solvent cleaning requirements in the South Coast Air Quality Management District's (SCAQMD)—in the Los Angeles area—solvent cleaning rules. These rules are therefore considered to satisfy RACT. Wisconsin has included several cleaning device and method requirements as well as storage, disposal and transport requirements from the SCAQMD's Rule 1171. Wisconsin's rule also has adequate recordkeeping requirements. The additions to Wisconsin's can coating rule are therefore approvable.

NR 422.06—Coil Coating

Wisconsin has amended its coil coating rules to incorporate the industrial solvent cleaning requirements from the industrial solvent cleaning CTG. These requirements apply to any coil coating facility with VOC emissions from all industrial cleaning operations which equal or exceed three tons per year on a 12 consecutive month rolling basis.

As specified in the CTG, cleaning solvent must not exceed a VOC content limit of 0.42 pounds VOC/gallon. In lieu of complying with this VOC content limit, an alternative limit of 8 mm Hg is also consistent with the CTG.

The CTG also references the solvent cleaning requirements in the SCAQMD solvent cleaning rules. Wisconsin has included several cleaning device and method requirements as well as storage, disposal and transport requirements from the SCAQMD's Rule 1171. Wisconsin's rule also has adequate recordkeeping requirements. The additions to Wisconsin's coil coating rule are therefore approvable.

NR 422.075—Paper Coating—Part 2

This section has been added to be consistent with EPA's 2007 CTG for Paper, Film, and Foil Coatings. Wisconsin's VOC content limits are 0.20 pounds VOC/pound of solids applied for pressure sensitive tape and label surface coatings, and 0.40 pounds VOC/pound solids applied for all other paper coatings, which are consistent with the CTG. When compliance is achieved by the use of add-on control, the required overall control efficiency of 90 percent is also consistent with the CTG. Wisconsin's paper coating rule also contains work practices to minimize VOC emissions from mixing operations, storage tanks, and other containers, and handling operations for coatings, thinners, cleaning materials and waste materials. The requirements in this section are approvable because they are consistent with the subject CTG.

NR 422.08—Fabric and Vinyl Coating

Wisconsin has amended its fabric and vinyl coating rules to incorporate the industrial solvent cleaning requirements from the industrial solvent cleaning CTG. These requirements apply to any fabric and vinyl coating facility with VOC emissions from all industrial cleaning operations which equal or exceed three tons per year on a 12 consecutive month rolling basis.

As specified in the CTG, cleaning solvent must not exceed a VOC content limit of 0.42 pounds VOC/gallon. In lieu of complying with this VOC content limit, an alternative limit of 8 mm Hg is also consistent with the CTG.

The CTG also references the solvent cleaning requirements in the SCAQMD solvent cleaning rules. Wisconsin has included several cleaning device and method requirements as well as storage, disposal and transport requirements from the SCAQMD's Rule 1171. Wisconsin's rule also has adequate recordkeeping requirements. The additions to Wisconsin's fabric and vinyl coating rule are therefore approvable.

NR 422.083—Plastic Parts Coating

This section has been amended to include the cleaning material work practices in EPA's 2008 CTG for Miscellaneous Metals and Plastic Parts Coating. These work practices include storing all VOC-containing cleaning materials and shop towels used for cleaning in closed containers and minimizing emissions of VOC during cleaning of coating application, storage, mixing, and conveying equipment by ensuring that cleaning is performed without atomizing any VOC-containing cleaning material and that the used material is captured and contained. These work practices satisfy Wisconsin's requirement to have acceptable cleaning solvent requirements for plastic parts coating operations and are approvable.

NR 422.09—Automobile and Light-Duty Truck Manufacturing

This section has been amended to include the cleaning material work practices in EPA's 2008 CTG for Automobile and Light-Duty Truck Assembly Coatings. A subject facility must develop and implement a work practice plan to minimize VOC emissions from cleaning and purging of equipment associated with all coating operations. This plan must specify practices and procedures for vehicle body wiping, coating line purging, flushing of coating systems, cleaning of spray booth grates, walls and equipment as well as external spray booth areas. These work practices satisfy Wisconsin's requirement to have acceptable cleaning solvent requirements for automobile and light-duty truck assembly coatings operations and are approvable.

NR 422.095—Automobile Refinishing Operations

Wisconsin has amended its automobile refinishing operations rules to incorporate the industrial solvent cleaning requirements from the industrial solvent cleaning CTG. These requirements apply to any automobile refinishing facility with VOC emissions from all industrial cleaning operations which equal or exceed three tons per year on a 12 consecutive month rolling basis.

As specified in the CTG, cleaning solvent must not exceed a VOC content limit of 0.42 pounds VOC/gallon. In lieu of complying with this VOC content limit, an alternative limit of 8 mm Hg is also consistent with the CTG.

The CTG also references the solvent cleaning requirements in the SCAQMD solvent cleaning rules. Wisconsin has included several cleaning device and method requirements as well as storage, disposal and transport requirements from the SCAQMD's Rule 1171. Wisconsin's rule also has adequate recordkeeping requirements. The additions to Wisconsin's automobile refinishing rule are therefore approvable.

NR 422.105 Furniture Metal Coatings—Part 2

This section has been added to be consistent with EPA's 2007 CTG for Metal Furniture Coatings. Wisconsin's VOC content limits, *e.g.* 2.3 pounds VOC/gallon for general, one component coatings, are consistent with the CTG. When compliance is achieved by the use of add-on control, the required overall control efficiency of 90 percent is also consistent with the CTG. Wisconsin's metal furniture coating rule also contains work practices to minimize VOC emissions from mixing operations, storage tanks, and other containers, and handling operations for coatings, thinners, cleaning materials and waste materials. The requirements in this section are approvable because they are consistent with the subject CTG.

NR 422.115 Surface Coating of Large Appliance—Part 2

This section has been added to be consistent with EPA's 2007 CTG for Large Appliance Coatings. Wisconsin's VOC content limits, *e.g.* 2.3 pounds VOC/gallon for general, one component coatings, are consistent with the CTG. When compliance is achieved by the use of add-on control, the required overall control efficiency of 90 percent is also consistent with the CTG. Wisconsin's large appliance coating rule also contains work practices to minimize VOC emissions from mixing operations, storage tanks, and other containers, and handling operations for coatings, thinners, cleaning materials and waste materials. The requirements in this section are approvable because they are consistent with the subject CTG.

NR 422.125 Wood Furniture Coating

Wisconsin's wood furniture coating rule has been amended to include cleaning material work practices that are consistent with EPA's 1996 CTG for the Control of VOC Emissions from Wood Furniture Manufacturing Operations. The 25 tons per year potential applicability cutoff has been revised to include the emissions from any related cleaning activities. These cleaning material work practices include storing VOC containing materials in closed containers, collecting all VOC-containing cleaning material used to clean spray guns and spray gun lines in a container and keeping the container covered except when adding or removing material, controlling emissions of VOC containing material from washoff operations and using strippable spray booth materials containing no more than 0.8 pounds of VOC per pound of solids. These work practices are consistent with the wood furniture CTG and are approvable.

NR 422.127 Use of Adhesives

Wisconsin's adhesives rule has been amended to include cleaning material work practices that are consistent with EPA's 2008 CTG for Miscellaneous Industrial Adhesives. These work practices include storing all VOC-containing cleaning materials in closed containers and minimizing emissions of VOC during cleaning of coating application, storage, mixing, and conveying equipment by ensuring that cleaning is performed without atomizing any VOC containing cleaning material and that the used material is captured and contained. An applicability cutoff of three tons on a 12 consecutive month rolling basis has also been added. These work practices are consistent with the miscellaneous industrial adhesives CTG and are approvable.

NR 422.131 Flat Wood Panel Coating—Part 2

This section has been added to be consistent with EPA's 2006 CTG for Flat Wood Paneling Coatings. Wisconsin's VOC content limit is 2.1 pounds VOC/gallon, which is consistent with the CTG. When compliance is achieved by the use of add-on control, the required overall control efficiency of 90 percent is also consistent with the CTG. Wisconsin's flat wood paneling rule also contains work practices to minimize VOC emissions from mixing operations, storage tanks, and other containers, and handling operations for coatings, thinners, cleaning materials and waste materials. The requirements in this section are approvable because they are consistent with the subject CTG.

NR 422.14 Graphic Arts

Wisconsin has amended its graphic arts rule to incorporate the industrial solvent cleaning requirements from the industrial solvent cleaning CTG. These requirements apply to any (non-flexible packaging) graphic arts facility with VOC emissions from all industrial cleaning operations which equal or exceed three tons per year on a 12 consecutive month rolling basis.

As specified in the CTG, cleaning solvent must not exceed a VOC content limit of 0.42 pounds VOC/gallon—except for a 0.83 pounds VOC/gallon limit for cleaning of publication rotogravure ink application equipment and a 5.4 pounds VOC/gallon limit for cleaning of ultraviolet ink application equipment. The latter two limits are based on the SCAQMD's Rule 1171, discussed above. In lieu of complying with these VOC content limits, an alternative limit of 8 mm Hg is also consistent with the CTG. Wisconsin has included several cleaning device and method requirements as well as storage, disposal and transport requirements from the SCAQMD's Rule 1171. Wisconsin's rule also has adequate recordkeeping requirements. The additions to Wisconsin's graphic arts rule are therefore approvable.

NR 422.141—Flexible Package Printing

These regulations have been revised based on and are consistent with EPA's 2006 CTG for Flexible Packaging Printing Materials. Subject printing lines may comply by meeting limits of 0.8 pounds VOC per pound of solids applied or 0.16 pounds VOC per pound of ink and coatings applied. Alternatively, compliance can be achieved by the use of add-on control achieving an overall reduction in VOM emissions ranging from 65 percent to 80 percent, depending upon when the printing line and control device were constructed. Work practices to reduce emissions from the use of VOM containing cleaning materials are also required. These work practices require that solvents used in cleaning operations be stored in covered containers and that VOC-containing cleaning material be conveyed in closed containers or pipes. The requirements in this section are approvable because they are consistent with the subject CTG.

NR 422.143 Lithographic Printing—Part 2

These regulations are based on and are consistent with EPA's 2006 CTG for Lithographic Printing. The control requirements for cleaning materials and fountain solutions apply if the combined emissions of VOC exceed three tons on a 12 consecutive month rolling basis. The add-on control requirements for heatset web offset printing operations apply if the potential emissions of VOC from a lithographic press dryer equal or exceed 25 tons per year. The fountain solution is subject to a percent VOC limit, based upon the temperature and whether or not the fountain solution contains alcohol. The cleaning materials (blanket or roller wash) must not exceed 30 percent by weight (nor equal or exceed 70 percent by weight for ultraviolet ink application equipment) VOC or the VOC composite partial pressure must be less than or equal to 10 mm Hg. An add-on control device on a subject heatset dryer must achieve a 90 percent or 95 percent reduction of VOC emissions, depending on the installation date of the add-on control device, or alternatively can comply by not exceeding an outlet concentration of 20 ppmv, as carbon. Recordkeeping requirements are also specified to establish compliance with the applicable limits. The requirements in this section are approvable because they are consistent with the subject CTG.

NR 422.144 Letterpress Printing

These regulations are based on and are consistent with EPA's 2006 CTG for Letterpress Printing. The control requirements for cleaning materials apply if the combined emissions of VOC exceed three tons on a 12 consecutive month rolling basis. The add-on control requirements for heatset web letterpress printing operations apply if the potential emissions of VOC from a lithographic press dryer equal or exceed 25 tons per year. The cleaning materials (blanket or roller wash) must not equal or exceed 70 percent by weight VOC or the VOC composite partial pressure must be less than 10 mm Hg. An add-on control device on a subject heatset dryer must achieve a 90 percent or 95 percent reduction of VOM emissions, depending on the installation date of the add-on control device. Recordkeeping requirements are also specified to establish compliance with the applicable limits. The requirements in this section are approvable because they are consistent with the subject CTG.

NR 422.145 Screen Printing

Wisconsin has amended its screen printing rules to incorporate the industrial solvent cleaning requirements in the CTG for Industrial Cleaning Solvents. These requirements apply to any screen printing facility with VOC

emissions from all industrial cleaning operations which equal or exceed three tons per year on a 12 consecutive month rolling basis.

As specified in the CTG, cleaning solvent must not exceed a VOC content limit of 0.42 pounds VOC/gallon. However, the CTG also references the solvent cleaning requirements in the SCAQMD solvent cleaning rules. As a result of SCAQMD limits that were in place at the time that EPA's CTG was issued, Wisconsin has adopted 4.2 pounds VOC/gallon limits for repair or maintenance cleaning and cleaning of ink application equipment. In lieu of complying with these VOC content limits, an alternative limit of 8 mm Hg is also consistent with the CTG.

Wisconsin has included several cleaning device and method requirements as well as storage and disposal requirements from the SCAQMD's Rule 1171. Wisconsin's rule also has adequate recordkeeping requirements. The additions to Wisconsin's screen printing rule are therefore approvable.

NR 422.15 Miscellaneous Metal Parts and Products

This section has been amended to include the cleaning material work practices in EPA's 2008 CTG for Miscellaneous Metals and Plastic Parts Coating. These work practices include storing all VOC-containing cleaning materials and shop towels used for cleaning in closed containers and minimizing emissions of VOC during cleaning of coating application, storage, mixing, and conveying equipment by ensuring that cleaning is performed without atomizing any VOC-containing cleaning material and that the used material is captured and contained. These work practices satisfy Wisconsin's requirement to have acceptable cleaning solvent requirements for miscellaneous metal parts and products coating operations and are approvable.

NR 422.15 Fire Truck and Emergency Response Vehicle Manufacturing

This section (a subset of miscellaneous metals) has been amended to include the cleaning material work practices in EPA's 2008 CTG for Miscellaneous Metals and Plastic Parts Coating. These work practices include storing all VOC-containing cleaning materials and shop towels used for cleaning in closed containers and minimizing emissions of VOC during cleaning of coating application, storage, mixing, and conveying equipment by ensuring that cleaning is performed without atomizing any VOC-containing cleaning material and that the used material is captured and contained. These work practices satisfy Wisconsin's requirement to have acceptable cleaning solvent requirements for miscellaneous metal parts and products coating operations and are approvable.

NR 423—Control of Organic Compound Emissions From Solvent Cleaning Operations

NR 423.02—Definitions

Wisconsin has added definitions of "Flexible magnetic data storage disc" and "Rigid magnetic data storage disc" because these terms are used in its industrial cleaning operations rule. These terms are accurately defined and are therefore approvable.

NR 423.037 Industrial Cleaning Operations—Part 2

Wisconsin has added an industrial solvent cleaning rule to incorporate the industrial solvent cleaning requirements, from the industrial solvent cleaning CTG, for those source categories whose rules do not contain such solvent cleaning requirements. These requirements apply to any such facility having actual VOC emissions from industrial cleaning operations which equal or exceed three tons per year on a 12 consecutive month rolling basis.

As specified in the CTG, cleaning solvents must not exceed a VOC content limit of 0.42 pounds VOC/gallon as well as several specialty cleaning limits based on limits in SCAQMD's Rule 1171 that were in place at the time that EPA's CTG was issued. In lieu of complying with these VOC content limits, an alternative limit of 8 mm Hg is also consistent with the CTG.

Wisconsin has included several cleaning device and method requirements as well as storage, disposal and transport requirements from the SCAQMD's Rule 1171. Wisconsin's rule also has adequate recordkeeping requirements. The additions to Wisconsin's graphic arts rule are therefore approvable.

NR 439 Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements

NR 439.04 Recordkeeping

Wisconsin amended its recordkeeping requirements for exempt sources (in NR 439.04(4)) to include the VOC emissions from cleaning operations, when necessary, in addition to the VOC emissions from coating or printing lines. Wisconsin also added a requirement that the maximum theoretical emissions be determined from the dryer of each heatset web lithographic or letterpress printing press. A requirement for detailed records of solvent use in solvent cleaning activities was also added.

Wisconsin added monitoring and recordkeeping requirements (in NR 439.04(6)) for when add-on control equipment is used to comply with solvent cleaning requirements.

The recordkeeping requirements in NR 439.04, as amended, along with the recordkeeping requirements in the coating and printing rules in NR 422 adequately establish the applicability and compliance requirements of the rules and are therefore approvable.

NR 484—Incorporation by Reference

Wisconsin has also updated its Incorporation by Reference Chapter, including CFR appendices, National Technical Information Service, other government organizations, the American Society for Testing and Materials and other private organizations.

V. Statutory and Executive Order Reviews

Under the 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 Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 9, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–4171 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0140; FRL–9634–5]

Revision to the South Coast Air Quality Management District Portion of the California State Implementation Plan, South Coast Rule 1315

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision for the South Coast Air Quality Management District (District) portion of the California SIP. This SIP revision proposes to incorporate Rule 1315—Federal New Source Review Tracking System—into the District's SIP approved New Source Review (NSR) program to establish the procedures for demonstrating equivalency with Federal offset requirements by specifying how the District will track debits and credits in its Offset Accounts for Federal NSR Equivalency for specific Federal nonattainment pollutants and their precursors. The District's SIP approved NSR program contained in Regulation XIII allows the District to exempt certain sources from obtaining offsetting emission reductions on the open market and for the District to provide offsets for designated sources that qualify, such as essential public services. EPA's proposal to approve this SIP revision is based on finding that Rule 1315 provides an adequate system to demonstrate on an on-going basis that an equivalent amount of offsets are being provided pursuant to this rule as would otherwise be required by the Clean Air Act (CAA) and that the emission reductions the District is crediting and debiting in its Offset Accounts meet the requirements of the CAA and can be used to provide the offsets otherwise required for Federal major sources and modifications.

DATES: Comments on this Notice of Proposed Rulemaking (NPR) must be submitted no later than March 23, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0140, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: r9airpermits@epa.gov.*
3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While EPA generally lists the documents in the docket in the index, some information may not be specifically listed as a line item in the index or may be publicly available only at the hard copy location (e.g., voluminous records, copyrighted material), 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. The hard copy materials constitute the docket.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

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

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I. Background

EPA allows and encourages local authorities to tailor SIP programs, including new source review permitting programs, to account for that community's particular needs provided that the SIP is not less stringent than the Act's requirements. See generally CAA Section 116, 42 U.S.C. 7416; *Train* v. *Natural Res. Defense Council,* 421 U.S. 60, 79 (1975); *Union Electric Co.* v. *EPA,* 427 U.S. 246, 250 (1976). The District's nonattainment permitting rules contained in District Regulation XIII went through numerous public workshops and stakeholder meetings prior to adoption in December 1995. The California Air Resources Board (CARB) submitted Regulation XIII along with supporting regulations and documents to EPA Region 9 on August 28, 1996. On December 4, 1996, EPA Region 9 published a direct final approval of Regulation XIII in the **Federal Register**. 61 FR 64291 (December 4, 1996) (Codified at 40 CFR 52.220(c)(240)(i)(*1*)).

When EPA approved Regulation XIII, we noted that Rule 1304 exempted certain major sources from obtaining offsets and Rule 1309.1 allowed the

District to provide offsets for specific "priority" projects. We approved these rules because the District committed to demonstrating on an annual basis that it was providing an amount of offsets that was equivalent to the amount required to offset Federal new and modified major sources.[1] EPA did not require the District to codify its internal NSR tracking system in rule language as a condition of full approval of Regulation XIII. From 1997 through 2005, the District submitted annual equivalency reports to its Board for approval and provided copies to EPA Region 9.[2] The District's Board meetings at which the annual reports were approved were open to the public.

EPA informed the District beginning in 2002 that if it was significantly expanding the sources that were allowed to obtain offsets from the internal NSR tracking system through a new offset budget rule (Rule 1309.2—Offset Budget), the tracking system's transparency should be improved. Proposed SCAQMD NSR Offset Tracking System, Oct. 14, 2005, (2005 Proposed Tracking System) at p.1. In 2004–2005, the District drafted regulatory language, now revised and adopted as Rule 1315, to establish NSR program equivalency with the Federal NSR offset requirements for major sources and demonstrate annually that the District provided sufficient offsets for Federal major sources and modifications that were (1) otherwise exempt from offset requirements under Rule 1304 or (2) allocated offsets pursuant to Rule 1309.1. Proposed Rule 1315(a), Preliminary Draft, Adopted Sept. 8, 2006.

In our discussions during 2002–2003, EPA also noted that the District's use of the negative NSR balances and other pre-1990 era offsets to fund the NSR tracking system would be inconsistent with Federal requirements unless the District had sufficient records for those offsets. Staff Report: Proposed Rule 1315—Federal New Source Review Tracking System, dated January 7, 2011, at pp. 6–7 (2011 Staff Report); 2005 Proposed Tracking System at pp. 1–2. The District concluded that it did not readily have sufficient documentation for many of the offsets it had collected from the negative NSR balances and other pre-1990 era offsets. Proposed SCAMQD NSR Offset Tracking System, Oct. 14, 2005 at p. 2.

The District responded to EPA's request by eliminating any offsets originating before 1990 without documentation on October 14, 2005. 2005 Proposed Tracking System, at pp. 12–13. Unlike many areas, the District requires almost all Federal minor sources to obtain a permit and offset any emission increases up to the sources' permitted emissions level. Rule 1303(b)(2).

The adjustments the District made in October 2005 to the existing NSR tracking system significantly decreased the balance of available offsets for most pollutants. For example, this adjustment reduced the internal NSR tracking system balance for PM_{10} (particulate matter with an aerodynamic diameter less than or equal to 10 micrometers) by 92% (from 34.5 to 2.67 tons per day). 2011 Staff Report, at p. 9; 2005 Proposed Tracking System, at Table 1. The District informed EPA Region 9 that it had previously credited the offsets from minor orphan shutdowns for State purposes. The District had not needed to credit those minor orphan shutdowns for its Federal accounts because the offsets from the negative NSR balances were far greater than the amount needed to demonstrate equivalency with Federal offset requirements for Rule 1304 exempt sources and Rule 1309.1 priority reserve sources. (2005 Proposed Tracking System), at p. 3.

EPA and the District had further discussions about the changes to the NSR tracking system resulting in a revised letter to EPA dated February 23, 2006. SCAQMD's Revised NSR Offset Tracking System, Feb. 23, 2006. The revisions primarily resolved issues EPA raised regarding the District's method of reporting the offset account balances and the remedy if a shortfall was projected. SCAQMD Letter from Dr. Barry Wallerstein to Deborah Jordan, Feb. 24, 2006. EPA responded by letter on April 11, 2006, indicating that the District's proposed NSR Offset Tracking System funded with emission reductions from minor and major orphan shutdowns and other sources (i.e. credits to the system) appeared to be sufficient for EPA to propose approval of Rule 1315. EPA Letter from Deborah Jordan to Dr. Barry Wallerstein, April 11, 2006. Both the October 2005 Proposed SCAQMD NSR Offset Tracking System and February 23, 2006 Revised NSR Offset Tracking System appended tables prepared by the SCAQMD called the "Federal Running Balances." Revised NSR Offset Tracking System, Feb. 23, 2006, Attachment 1. The Federal Running Balances table contains details concerning the credits added and debits subtracted from the NSR offset tracking system.

The District adopted Rule 1315's regulatory language codifying how it will account for, or "track", the emission reductions that it adds into its Offset Accounts as credits and those which it subtracts as debits to provide offsets for the construction of certain Federal major sources or modifications exempted from offset requirements pursuant to Rule 1304 or for which the District provided offsets pursuant to Rule 1309.1. SCAQMD Governing Board Resolution for the Re-adoption of Rule 1315—Federal New Source Review Tracking System, dated Feb. 4, 2011. EPA is now proposing to approve Rule 1315 as a SIP revision.

II. Evaluation of SIP Revision

A. What is in the SIP revision?

Rule 1315 which the District, through CARB, submitted to EPA consists of the regulatory text the District adopted on February 4, 2011, along with supporting documentation including a Staff Report dated January 7, 2011. EPA received the SIP submittal for Rule 1315 from CARB on March 2, 2011, and a supplemental submittal on February 7, 2012. On March 25, 2011, we found that the submittal of District Rule 1315 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The Rule contains a section describing its purpose and a definitions section. Rule 1315(a) and (b). Rule 1315(c), Offset Accounts for Federal NSR Equivalency, contains provisions for quantifying, crediting and debiting the offset accounts. Rule 1315(c)(1), District Offset Accounts for Federal Nonattainment Air Contaminants, provides that all pre-1990 offsets were removed at the end of 2005 and sets forth the initial District Offset Account Balances in Table A. Rule 1315(c)(2) provides that the District shall debit its Offsets Accounts for emissions increases at Federal new and modified major sources that are not required to provide Emission Reduction Credits (ERCs) based on Rules 1304 (Exemptions) and 1309.1 (Priority Reserve). Rule 1315(c)(3)(A) contains a list of the emission reductions the District can add to its Offset Accounts and 1315(c)(3)(B) establishes how the District will quantify the actual emissions reductions for that list. Rule 1315(c)(4) specifies how the District will discount each Offset Account annually to ensure the reductions will be surplus to all CAA requirements at the time an offset is

[1] Environmental Protection Agency, Region IX Air & Toxics Division Technical Support Document for EPA's Notice of Final Rulemaking for the California State Implementation Plan South Coast Air Quality Management District New Source Review by Gerardo C. Rios, October 24, 1996 (TSD).

[2] Annual Equivalency Reports approved by the South Coast AQMD Board, dated February 14, 1997, March 13, 1998, April 9, 1999, August 18, 2000, November 9, 2001, August 2, 2002, and April 2, 2004.

used. Rule 1315(c)(5) specifies the steps the District will take to calculate annually a Preliminary Determination of Equivalence and Final Determination of Equivalence. In Rule 1315(c)(6), the District sets forth how the credits and debits meet each of the Federal requirements for offsets. The remaining provisions in Rule 1315 establish the methods for reporting the annual Preliminary and Final Equivalency demonstrations, projecting future Offset Account balances and methods to remedy any balance shortfalls. Rule 1315 provides that it will expire on January 1, 2031.

B. What are the Federal Clean Air Act requirements?

The South Coast Air Basin is an extreme nonattainment area for ozone and a serious nonattainment area for PM_{10}. The Coachella Valley Air Basin is a severe nonattainment area for ozone and a serious nonattainment area for PM_{10}. Oxides of nitrogen (NO_X) and volatile organic compounds (VOC) are both ozone precursors and are therefore treated as ozone nonattainment pollutants. Sulfur dioxide (SO_2) emissions are PM_{10} precursors and are therefore also treated as a PM_{10} nonattainment pollutant. While the District is classified as nonattainment for $PM_{2.5}$ (particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers) and portions of the District as nonattainment for lead, Rule 1315 does not apply to these pollutants. The District was redesignated to attainment for carbon monoxide (CO) on May 11, 2007 (72 FR 26718), but CO is included in the tracking system because of its past nonattainment status.

As required by CAA § 110(a)(2)(C), SIPs are required to include provisions to comply with CAA Part D for nonattainment pollutants. Among the Part D requirements, § 173(a)(1)(A) requires new and modified major stationary sources to provide offsetting emission reductions. Section 173(c) requires the offsetting emission reductions to be quantifiable, surplus, permanent, and enforceable. See 40 CFR 51.165(a)(3)(ii)(c)(*i*); 40 CFR part 51, appendix S. This proposal will refer to those requirements as the "federal integrity criteria".

EPA is proposing to approve Rule 1315 because the rule ensures that the emission reductions in the District's Offset Accounts meet the Federal integrity criteria. See Rule 1315(c). Rule 1315 also demonstrates that the District's offset tracking system provides an equivalent quantity of offsets for those major sources and modifications that are not required to provide such offsets pursuant to District Rules 1304 and 1309.1. EPA's analysis of how the credits and debits tracked in Rule 1315 meet the Federal integrity criteria is summarized below and set forth in more detail in the Technical Support Document (TSD).

C. How does the SIP revision comply with the Federal integrity criteria and demonstrate equivalency?

1. The Offsets Credited and Debited Through Rule 1315 Are Quantifiable

EPA is proposing to approve Rule 1315 because the emission reductions that the District credits and debits to its Offset Accounts meet the requirement to be quantifiable emissions reductions. The District meets this requirement by demonstrating that the credits and debits are actual and quantifiable reductions of emissions. To quantify the reductions of emissions from orphan shutdown sources, the District determines the permitted emissions level and then applies an 80% actual emissions factor. Rule 1315(c)(3)(B)(i); Staff Report at p. 17 ("AQMD proposes to use an average discount factor to account for the difference between potential and actual emissions."). The vast majority of emission reductions credited to the Offset Accounts are from orphan shutdowns, which occur when the owner/operator of a stationary source that has been shut down does not apply for an Emission Reduction Credit (ERC) under Rule 1309 (Emission Reduction Credits and Short Term Credits). Staff Report at p. 17. The information that is available to the District when a source is shut down and the operating permit is inactivated are the source's permitted emissions, which represent its potential to emit rather than its actual emissions. Under Rule 1315, the District makes an adjustment to the permitted (i.e. potential) emissions by applying an 80% actual emissions factor before crediting these emissions to the Offset Accounts. See Rule 1315(c)(3)(B)(i); Staff Report at p. 17.

The District has justified its determination that reducing the permitted (i.e. potential) emissions by 20% and crediting the remaining 80% is an adequate representation of actual emissions based on several considerations. The District has historically implemented an 80% actual emissions factor for estimating actual emission reductions in its Regulation XIII annual reports following concurrence by the California Air Resources Board. Staff Report at 17. The District also provided a Federal Reserve Statistical Release Report examining historical industrial production and capacity utilization. While certain short term cycles may reflect greater or lower utilization, the District's justification for selecting an 80% factor over the long term is supported by this data. Id. The District's method of quantifying actual emission reductions is also supported by the inherent structure of the District's NSR program. Every stationary source that is operated in the District with permitted emissions exceeding 4 tons per year (tpy) of ozone precursors or PM_{10} (including precursors) is required to obtain ERCs to offset the entire amount of its permitted emissions. The cost of obtaining the ERCs to offset permitted emissions provides "a strong incentive to keep [each source's] potential emissions in line with actual emissions during times of high production". Staff Report at 17.

For exempt and priority reserve sources that obtain their offsets from the District, the District limits the amount of offsets provided by including permit conditions that limit operations to actual operating scenarios. The District has shown that fifty to eighty percent of the very small exempt sources (emitting < 4 tpy of most pollutants) have permits emissions limits that are less than one-half of the exemption threshold (i.e. permitted emissions are less than 2 tpy). Table 5 of Staff Report, p 18. This information supports finding that the District is permitting sources at close to the source's actual emissions and that an 80% actual emissions factor adequately reflects actual reductions from orphan shutdown sources.

For the reasons provided by the District, EPA is proposing to approve Rule 1315 as ensuring that the emission reductions it credits to its Offset Accounts pursuant to Rule 1315(c)(3)(B)(i) meet the requirement to be actual emission reductions based on crediting only 80% of permitted emission levels.

2. The Offsets Credited and Debited Through Rule 1315 Are Surplus

Rule 1315(c)(4) ensures that any offsets debited from the District Offset Accounts are properly adjusted to be surplus at the time they are used as required by the Federal integrity criteria. Specifically, the rule requires that the balance of credits in the Offset Accounts for each pollutant be reduced annually to account for any newly adopted rules that control these pollutants, ensuring that the debits used as offsets are surplus at the time they are used. Rule 1315(c)(4) (providing that the District discount the Offset Account balances annually "based on the percentage reduction in overall

permitted emissions projected to be achieved as a result of implementation of control requirements that became effective during the previous calendar year for each specific nonattainment contaminant within the District.") EPA is proposing to find that Rule 1315 ensures that the offsets the District debits from its Offset Accounts meet the Federal integrity criterion to be surplus.

3. The Offsets Debited From the District Offset Accounts Are Permanent

The emission reductions credited to the District's Offset Accounts are all permanent reductions at the time they are credited to the accounts because the permit for the emission source has either been retired or revised to include conditions that limit the emissions to levels lower than they are otherwise required to be limited through the use of federally enforceable permit conditions. The debits are permanent because Rule 1315 requires the District to subtract those offsets from the District's Offset Account balances. Rule 1315(c)(5)(B). The District must provide its Preliminary and Final Determinations of Equivalency annually to ensure there is a positive balance in each Offset Account. Rule 1315 also contains an equivalency backstop provision if any Offset Account has a shortfall. Rule 1315(f). EPA is proposing to find that Rule 1315 assures that the emission reductions in the District's Offset Accounts meet the requirement for permanent reductions.

4. The Offsets Credited and Debited From the District Offset Accounts Are Enforceable

The emission reductions credited to the District's Offset Accounts for orphan shutdowns or orphan reductions are all enforceable reductions at the time they are credited to the accounts because the permit for the emission source has either been retired, which means the source is no longer allowed to operate/emit those pollutants, or revised to include conditions that limit the emissions to levels lower than they are otherwise required to be limited through the use of federally enforceable permit conditions. This ensures that the emissions will be permanently retired or reduced. Rule 1315(b)(4) & (5) and (c)(3)(A)(i) & (ii). For each of the other types of credits listed in Rule 1315 (c)(3)(A), the credits are based on ERCs that have been generated pursuant to Rule 1309, which also requires that the emission reductions meet each of the Federal integrity criterion, including the requirement to be enforceable emission reductions. Therefore, EPA is proposing to find Rule 1315 meets the Federal integrity criterion for enforceable reductions.

D. Do Rule 1315's offsets comply with the EPA's base year requirements?

40 CFR 51.165(a)(3)(i)(C) provides:

> Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if * * *..(ii) [t]he shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.

See also 40 CFR part 50, appendix S, IV.

Rule 1315 is being submitted by the District to demonstrate equivalency with the Part D requirements for ozone and PM_{10} (and their precursor emissions). To evaluate Rule 1315's compliance with the base year requirement for using offsets from emissions units being shut down or curtailed, EPA has determined that the most appropriate attainment demonstrations to review are the District's approved PM_{10} and 8-hour ozone Plans. Approval and Promulgation of [SIPs] for Air Quality Planning Purposes; California—South Coast and Coachella, 70 FR 69081 (Nov. 14, 2005) (2003 Plan); Approval of Air Quality Implementation Plans; California; South Coast; Attainment Plan for 1997 8-hour Ozone Standards, EPA–R09–OAR–2011–0622 (Signed Dec. 15, 2011) (2007 Plan). The District's PM_{10} Plan was adopted in 2003 and relies on a 1997 base year emission inventory. 2003 Plans, Chapter 3 & Appendix III. For ozone, the Plan was adopted in 2007 and relies on a 2002 base year emission inventory. 2007 Plan, Chapter 3 & Appendix III.

In accordance with the base year requirements specified in 40 CFR 51.165, the District estimated that 3.1 tons per day (tpd) of pre-2002 base year VOC emission reductions may be needed to satisfy offset demand. 2007 Plan Appendix III. For ozone precursors, the District added 27 and 2 tons per day for VOC and NO_X, respectively, as growth.[3] This amount includes the 3.1 tpd of pre-2002 base year VOC emission reductions. While this is not the total amount of pre-2002 base year emission reductions available as debits pursuant to Rule 1315, the District has demonstrated that this amount represents the highest amount of pre-2002 credits that are expected to be used as offsets prior to attainment of the ozone standard. 2007 Plan Appendix III, pgs 28–34. The District used a similar approach for the 2003 Plan as it pertains to PM_{10} and SO_X emissions. See the TSD for additional details. This approach is consistent with EPA guidance that states must include pre-base year credits to the "extent that the State expects that such credits will be used for offsets * * *". 57 FR 13498

Therefore, even if the District Offset Accounts rely on pre-base year emission reductions as offsets, the District's Plans have adequately added pre-base year emissions explicitly into the appropriate projected planning inventories. For these reasons, EPA is proposing to approve Rule 1315.

E. CAA Section 110(l)

Under section 110(l) of the CAA, EPA may not approve any SIP revision that would interfere with attainment, reasonable further progress (RFP) or any other CAA requirement. EPA's incorporation of Rule 1315 into the SIP will not interfere with attainment or RFP because the rule provides a regulatory mechanism setting forth the internal offset accounting system that the District has been relying on. In addition, the District does not rely on the offsets in the District's Offset Accounts for attainment or RFP in the District's most recent attainment demonstrations for ozone or PM_{10}.

This SIP revision also does not interfere with any other CAA requirement. Rule 1315 provides regulatory language detailing how the District will quantify and add credits and subtract debits from its Offset Accounts. Our proposal to approve Rule 1315 is based on finding the rule ensures the credits and debits meet the Federal integrity criteria and that the District system overall is equivalent to the requirements of Section 173.

F. Public Comment and Final Action

Because EPA has determined Rule 1315 fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. After considering the information and views submitted to us during the comment period, we will take final action on this SIP submittal.

Rule 1315 has been under development at the District and the

[3] See 2007 Plan Appendix III, pgs 28–34, Tables 2–8 and 2–12. For Table 2.8, the District provided EPA with the point and area source data used to generate the summary data. EPA used this data to determine the amount of emission due to growth at facilities subject to NSR offset requirements.

interested public has been involved in its development for the last several years, including state litigation concerning the Rule. Therefore, EPA does not anticipate extending the public comment period beyond 30 days absent extraordinary or compelling circumstances.

III. Statutory and Executive Order Reviews

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

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

In addition, this proposed 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

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 9, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–4172 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0028; FRL–9633–6]

RIN 2060–AQ70

Mandatory Reporting of Greenhouse Gases Rule: Confidentiality Determinations and Best Available Monitoring Methods Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action re-proposes confidentiality determinations for the data elements in subpart I, Electronics Manufacturing source category, of the Mandatory Reporting of Greenhouse Gases Rule. On July 7, 2010, the EPA proposed confidentiality determinations for then-proposed subpart I data elements and is now issuing this re-proposal due to significant changes to certain data elements in the final subpart I reporting requirements. In addition, the EPA is proposing amendments to subpart I regarding the calculation and reporting of emissions from facilities that use best available monitoring methods. Proposed amendments would remove the obligation to recalculate and resubmit emission estimates for the period during which the facility used best available monitoring methods after the facility has begun using all applicable monitoring methods of subpart I.

DATES: *Comments.* Comments must be received on or before March 23, 2012 unless a public hearing is requested by February 29, 2012. If a timely hearing request is submitted, we must receive written comments on or before April 9, 2012.

Public Hearing. The EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by February 29, 2012. Upon such request, the EPA will hold the hearing on March 8, 2012 in the Washington, DC area starting at 9 a.m., local time. EPA will provide further information about the hearing on its Web page if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0028, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: GHGReportingCBI@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2011–0028, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0028. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2011–0028. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email,

comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov*. For technical information, contact the Greenhouse Gas Reporting Rule Hotline at: *http://www.epa.gov/climatechange/emissions/ghgrule_contactus.htm*. Alternatively, contact Carole Cook at (202) 343–9263.

SUPPLEMENTARY INFORMATION: *Additional information on submitting comments:* To expedite review of your comments by agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, email address: *GHGReportingRule@epa.gov*.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal, memoranda to the docket, and all other related information will also be available through the WWW on the EPA's Greenhouse Gas Reporting Rule Web site at *http://www.epa.gov/climatechange/*.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

BAMM best available monitoring methods
CAA Clean Air Act
CO_2 carbon dioxide
CBI confidential business information
CFR Code of Federal Regulations
DRE Destruction or Removal Efficiency
EPA U.S. Environmental Protection Agency
F–GHG fluorinated greenhouse gas
GHG greenhouse gas
HTF heat transfer fluid
$mtCO_2e$ metric ton carbon dioxide equivalent
N_2O nitrous oxide
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management & Budget
RFA Regulatory Flexibility Act
RSASTP Random Sampling Abatement System Testing Program
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
WWW Worldwide Web

Organization of This Document. The following outline is provided to aid in locating information in this preamble. Section I of this preamble provides general information on the Greenhouse Gas Reporting Program and preparing comments on this action. Sections II and III discuss the CBI re-proposal, and Section IV discusses the proposed amendments to the best available monitoring provisions. Section V discusses statutes and executive orders applicable to this action.

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I. General Information

A. What is the purpose of this action?

The EPA is re-proposing confidentiality determinations for the data elements in subpart I of 40 CFR part 98 of the Mandatory Reporting of Greenhouse Gases Rule (hereinafter referred to as "Part 98"). Subpart I of Part 98 requires monitoring and reporting of greenhouse gas (GHG) emissions from electronics manufacturing. The electronics manufacturing source category (hereinafter referred to as "subpart I") includes facilities that have annual emissions equal to or greater than 25,000 $mtCO_2e$.

The proposed confidentiality determinations in this notice cover all of the data elements that are currently in subpart I except for those that are in the "Inputs to Emission Equations" data category. The covered data elements and their proposed data category assignments are listed by data category in the memorandum entitled "Proposed Data Category Assignments for Subpart I" in Docket EPA–HQ–OAR–2011–0028.

This action also proposes amendments to provisions in subpart I regarding the calculation and reporting of emissions from facilities that use best available monitoring methods (BAMM). Following the December 1, 2010 publication finalizing subpart I in the "Mandatory Reporting of Greenhouse Gases: Additional Sources of

Fluorinated GHGs" rule (75 FR 74774, hereinafter referred to as the "final subpart I rule"), industry members requested reconsideration of several provisions in the final subpart I rule. This action responds to a petition for reconsideration of the specific subpart I provisions that require facilities that have been granted extensions to use BAMM to recalculate their emissions for the time period for which BAMM was granted at a later date, after they have begun following all applicable monitoring requirements of subpart I.

In today's notice, the EPA is not taking any action on other issues raised by the petitioners. Although we are not seeking comment on those issues at this time, the EPA reserves the right to further consider those issues at a later time.

B. Does this action apply to me?

This proposal affects entities that are required to submit annual GHG reports under subpart I of Part 98. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). Part 98 and this action affect owners and operators of electronics manufacturing facilities. Affected categories and entities include those listed in Table 1 of this preamble.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	Liquid crystal display unit screens manufacturing facilities.
	334419	Micro-electro-mechanical systems manufacturing facilities.

Table 1 of this preamble lists the types of entities that potentially could be affected by the reporting requirements under the subpart covered by this proposal. However, this list is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Other types of facilities not listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A as well as 40 CFR part 98, subpart I. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. Legal Authority

The EPA is proposing rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114. As stated in the preamble to the 2009 final rule (74 FR 56260) and the Response to Comments on the Proposed Rule, Volume 9, Legal Issues, CAA section 114 provides the EPA broad authority to obtain the information in Part 98, including those in subpart I, because such data would inform and are relevant to the EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed Part 98 (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA.

D. What should I consider as I prepare my comments to the EPA?

1. Submitting Comments That Contain CBI

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 the 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 marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2011–0028.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

Identify the rulemaking by docket number and other identifying information (e.g., subject heading, **Federal Register** date and page number).

Follow directions. The EPA may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

Explain why you agree or disagree, and suggest alternatives and substitute language for your requested changes.

Describe any assumptions and provide any technical information and/or data that you used.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow us to reproduce your estimate.

Provide specific examples to illustrate your concerns and suggest alternatives.

Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your information and comments by the comment period deadline identified in the preceding section titled **DATES**. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

To expedite review of your comments by agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, email *GHGReportingCBI@epa.gov*. You are also encouraged to send a separate copy of your CBI information to Carole Cook

at the provided mailing address in the **FOR FURTHER INFORMATION CONTACT** section. Please do not send CBI to the electronic docket or by email.

II. Background and General Rationale on CBI Re-Proposal

A. Background on CBI Re-Proposal

On October 30, 2009, the EPA published the Mandatory GHG Reporting Rule, 40 CFR part 98, for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under Part 98 and its subsequent amendments, certain facilities and suppliers above specified thresholds are required to report GHG information to the EPA annually. For facilities, this includes those that directly emit GHGs ("direct emitters") and those that geologically sequester or otherwise inject carbon dioxide (CO_2) underground. The data to be reported consists of GHG emission and supply information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions and supplied quantities. In the preamble to Part 98, we stated, "Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not emissions data and are CBI (74 FR 56287, October 30, 2009)."

The EPA proposed confidentiality determinations for Part 98 data elements, including data elements contained in subpart I in the July 7, 2010 proposed CBI determination proposal (75 FR 39094, hereafter referred to as the "July 7, 2010 CBI proposal"). The data reporting requirements for subpart I were finalized on December 1, 2010 (75 FR 74774) as an amendment to Part 98. As explained in more detail in Section II.C of this preamble, many data elements were added or changed following proposal of the subpart I reporting requirements. Further, in a separate action, the EPA is finalizing amendments to subpart I, which revise one data element and add two new data elements. See "Greenhouse Gas Reporting Program: Electronics Manufacturing (Subpart I): Revisions to Heat Transfer Fluid Provisions" (hereinafter referred to as the "Subpart I Heat Transfer Fluid Provisions final rule"). In light of the above, today we are re-proposing for public comment the confidentiality determinations for the data elements in subpart I to reflect the finalized new and revised data elements in this subpart.

On May 26, 2011, the EPA published the final CBI determinations for the data elements in 34 Part 98 subparts, except for those data elements that were assigned to the "Inputs to Emission Equations" data category (76 FR 30782, hereinafter referred to as the "Final CBI Rule"). That final rule did not include CBI determinations for subpart I.

The Final CBI Rule: (1) Created and finalized 22 data categories for Part 98 data elements; (2) assigned data elements in 34 subparts to appropriate data categories; (3) for 16 data categories, issued category-based final CBI determinations for all data elements assigned to the category; and (4) for the other five data categories (excluding the inputs to emission equations category), determined that the data elements assigned to those categories are not "emission data" but made individual final CBI determination for those data elements. The EPA also did not make categorical determinations regarding the CBI status of these five categories. The EPA did not make final confidentiality determinations for the data elements assigned to the "Inputs to Emission Equations" data category.

The EPA finalized subpart I reporting requirements on December 1, 2010 (75 FR 74774). The final subpart I rule substantively revised data reporting elements and added new data reporting elements relative to the July 7, 2010 CBI proposal. In addition, in a separate action, the EPA is finalizing amendments to subpart I, which revises one data reporting element and adds two new data reporting elements. Today's re-proposal addresses the subpart I data elements as finalized, including the amendments discussed above.[1]

B. What is the rationale for re-proposing the CBI determinations for subpart I?

In the July 7, 2010 CBI Proposal, the EPA proposed CBI determinations for the data elements in then-proposed subpart I because the EPA initially did not anticipate any significant change to these data elements when finalizing the subpart I reporting requirements. In light of the changes described in section II.A of this preamble to the subpart I data elements since the July 7, 2010 CBI proposal, the EPA is re-proposing the confidentiality determinations for the data elements in subpart I.

Because this is a re-proposal, the agency is not responding to previous comments submitted on the July 7, 2010 CBI proposal relative to the data elements in this subpart. Although we considered those comments when developing this re-proposal, we encourage you to resubmit all relevant comments to ensure full consideration by the EPA in this rulemaking. In resubmitting previous comments, please make any necessary changes to clarify that you are addressing the re-proposal and add details as requested in Section III.E of this preamble.

C. How does the Subpart I Heat Transfer Fluid Provisions final rule affect the CBI re-proposal?

In a separate action, the EPA is finalizing technical revisions, clarifications, and other amendments to subpart I of Part 98 in the Subpart I Heat Transfer Fluid Provisions final rule.

The Subpart I Heat Transfer Fluid Provisions final rule is revising one and adding two subpart I data elements that are not inputs. Accordingly, we are making data category assignments to these three new and revised elements as finalized in the Subpart I Heat Transfer Fluid Provisions final rule. The revised data element includes a wording change from "each fluorinated GHG used" to "each fluorinated heat transfer fluid used." The two new data elements require a facility to report (1) the date on which the facility began monitoring emissions of fluorinated heat transfer fluids (HTFs) and (2) whether the emission estimate includes emissions from all applications or only from the applications specified in the definition of fluorinated heat transfer fluids. The re-proposal addresses the data elements we are finalizing in the Subpart I Heat Transfer Fluid Provisions final rule, published as a separate action.

III. Re-Proposal of CBI Determinations for Subpart I

A. Overview

We propose to assign each of the data elements in subpart I, a direct emitter subpart, to one of 11 direct emitter data categories created in the Final CBI Rule. For eight of the 11 direct emitter categories, the EPA has made categorical confidentiality determinations, finalized in the Final CBI rule. For these eight categories, the EPA is proposing to apply the same categorical confidentiality determinations (made in the Final CBI rule) to the subpart I reporting elements assigned to each of these categories.

[1] Please note that the EPA also made other final revisions to subpart I in 2011 including an extension of best available monitoring methods (76 FR 36339, June 22, 2011) and changes to provide flexibility (76 FR 59542, September 27, 2011), but these actions did not change the list of reported data elements for subpart I.

In the Final CBI Rule, for two of the 11 data categories, the EPA did not make categorical confidentiality determinations, but rather made confidentiality determinations on an element-by-element basis. We are therefore following the same approach in this action for the subpart I reporting elements assigned to these two data categories. For three data elements within these two data categories, the EPA is proposing to make no CBI determination and, instead, make a case-by-case determination for actual data reported in these elements, as described in more detail in Section III.D of this preamble.

Lastly, in the Final CBI Rule, for the final data category, "Inputs to Emission Equations," the EPA did not make a final confidentiality determination and indicated that this issue would be addressed in a future action. Please note that in the August 25, 2011 Final Deferral, the EPA has already assigned certain subpart I data elements to the inputs data category. We are not proposing to assign any additional data elements to the inputs data category in this action. Please see the following Web site for further information on this topic: *http://www.epa.gov/climatechange/emissions/CBI.html.*

Table 2 of this preamble summarizes the confidentiality determinations that were made in the Final CBI Rule for the following direct emitter data categories created in that notice excluding the "Inputs to Emission Equations" data category as final determinations for that category have not yet been made.

TABLE 2—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR DIRECT EMITTER DATA CATEGORIES

Data category	Confidentiality determination for data elements in each category		
	Emission data [a]	Data that are not emission data and not CBI	Data that are not emission data but are CBI [b]
Facility and Unit Identifier Information	X		
Emissions	X		
Calculation Methodology and Methodological Tier	X		
Data Elements Reported for Periods of Missing Data that are Not Inputs to Emission Equations	X		
Unit/Process "Static" Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Unit/Process Operating Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Test and Calibration Methods		X	
Production/Throughput Data that are Not Inputs to Emission Equations			X
Raw Materials Consumed that are Not Inputs to Emission Equations			X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests			X

[a] Under CAA section 114(c), "emission data" are not entitled to confidential treatment. The term "emission data" is defined at 40 CFR 2.301(a)(2)(i).
[b] Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.
[c] In the Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

B. Request for Comments

Today's action provides affected businesses subject to Part 98, other stakeholders, and the general public an opportunity to provide comment on several aspects of this proposal. For the CBI component of this rulemaking, we are soliciting comment on the following specific issues.

First, we seek comment on the proposed data category assignment for each of these data elements. If you believe that the EPA has improperly assigned certain data elements in this subpart to one of the data categories, please provide specific comments identifying which data elements may be mis-assigned along with a detailed explanation of why you believe them to be incorrectly assigned and in which data category you believe they would best belong.

Second, we seek comment on our proposal to apply the categorical confidentiality determinations (made in the Final CBI Rule for eight direct emitter data categories) to the data elements in subpart I that are assigned to those categories.

Third, for those data elements assigned to the two direct emitter data categories without categorical CBI determinations, we seek comment on the individual confidentiality determinations we are proposing for these data elements. If you comment on this issue, please provide specific comment along with detailed rationale and supporting information on whether such data element does or does not qualify as CBI.

C. Approach to Making Confidentiality Determinations

For subpart I, the EPA proposes to assign each data element to one of 10 non-inputs direct emitter data categories. Please see the memorandum entitled "Proposed Data Category Assignments for Subpart I" in the docket: EPA–HQ–OAR–2011–0028 for a list of the data elements in these subparts and their proposed category assignment. As noted previously, the EPA made categorical confidentiality determinations for eight direct emitter data categories and the EPA proposes to apply those final determinations to the data elements assigned to those categories in this rulemaking. For the data elements in the two direct emitter data categories that do not have categorical confidentiality determinations, we are proposing to make confidentiality determinations on an individual data element basis.[2]

The following two direct emitter data categories do not have category-based CBI determinations: "Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" and "Unit/Process Operating Characteristics That are Not Inputs to Emission Equations." In Section III.D of this preamble, the data elements in these two data categories that are part of the annual GHG report submission and part of the subpart I BAMM use extension requests are identified in a table. For all data elements in these two data categories, the EPA states in the table the reasons for proposing to determine

[2] As mentioned above, EPA determined that data elements in these two categories are not "emission data" under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98. That determination would apply to data elements in subpart I assigned to those categories through this rulemaking.

that each does or does not qualify as CBI under CAA section 114(c). These data elements are also listed individually by data category and proposed confidentiality determination in the memorandum entitled "Proposed Data Category Assignments for Subpart I" in Docket EPA–HQ–OAR–2011–0028. For three data elements, the EPA is proposing to make no CBI determination and, instead, make a case-by-case determination for actual data reported in these elements, as described in more detail in the table in Section III.D of this preamble. The EPA is specifically soliciting comments on the CBI proposals for data elements in these two data categories.

D. Proposed Confidentiality Determinations for Individual Data Elements in Two Data Categories

As described in Section III.C of this preamble, the EPA is proposing confidentiality determinations on an element-by-element basis for those that we are proposing to assign to the "Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" and "Unit/Process Operating Characteristics That are Not Inputs to Emission Equations" data categories. In this section, the EPA presents in Table 3 and Table 4 of this preamble the data elements that we are proposing to assign to those two data categories and the reasons for proposing to determine that each does or does not qualify as CBI under CAA section 114(c), or the reason that we are not making a CBI determination.

The electronics manufacturing industry uses multiple long-lived fluorinated greenhouse gases (fluorinated GHGs), as well as nitrous oxide (N_2O) during manufacturing of electronic devices, including, but not limited to, liquid crystal displays, microelectro-mechanical systems, photovoltaic cells, and semiconductors. Fluorinated GHGs are used mainly for plasma etching of silicon materials, cleaning deposition tool chambers, and wafer cleaning, but may be used in other types of electronics manufacturing processes. Besides dielectric film etching and chamber cleaning, much smaller quantities of fluorinated GHGs are used to etch polysilicon films and refractory metal films like tungsten. Additionally, some electronics manufacturing equipment may employ fluorinated GHG liquids as HTFs. Nitrous oxide may be the oxidizer of choice during deposition of silicon oxide films in manufacturing electronic devices.

These electronic manufacturing steps are performed in carefully controlled process chambers containing the silicon wafers and the fluorinated GHGs or N_2O. Producing a finished wafer with multiple electronic devices (e.g., computer chips) may require depositing and etching 50 or more individual layers of material. The conditions under which the individual steps are performed, the ability of a facility to produce certain electronic features, and the ability of a facility to produce a certain number of devices with a minimum number of defects at a certain cost per unit, among other variables, affect the overall efficiency of the manufacturing process, and thus contribute to the business's profitability. These processes, therefore, are a factor in the competitive standing of a particular facility in this industry.

The "Unit/Process 'Static' Characteristics That Are Not Inputs to Emission Equations" Data Category

The EPA is proposing to assign 16 subpart I data elements to the "Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" data category because they are basic characteristics of abatement devices and tools that do not vary with time or with the operations of the process (and are not inputs to emission equations). These 16 data elements are shown in Table 3 of this preamble along with their proposed confidentiality determination and the associated justification for the determination:

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY

Data element	Proposed to be confidential?	Justification
1. For all fluorinated greenhouse gases (F–GHG) or N_2O used at your facility for which you have not calculated emissions using Equations I–6 through I–10: Report a brief description of GHG use.	Yes	Subpart I lists five manufacturing processes in 40 CFR 98.96(a) that are common to the electronics manufacturing industry. If a facility employs an uncommon process during manufacturing, then the reporting facility must instead report a description of the uncommon process (see 40 CFR 98.96(g)). As such, this data element may cover novel production methods that may have been developed by the reporting facility, generally at great expense and time investment. Facilities develop and use such methods because they improve manufacturing efficiencies, reduce manufacturing costs, or improve product performance, quality, or production rate, thereby conferring a competitive advantage. Should competitors gain knowledge of such an exclusive method, they could undercut the facility's competitive advantage, by replicating it at less expense. Therefore, the EPA finds that releasing the report of a brief description of GHG use would likely result in substantial competitive harm.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
2. Identification of the quantifiable metric used in your facility-specific engineering model to apportion gas consumption (may not be reported in 2011, 2012, and 2013).	No CBI determination proposed in this rulemaking.	The EPA was petitioned to reconsider the method and data elements related to apportioning and, as an initial response to that petition, the EPA is not requiring the reporting of these recipe-specific data elements for the 2011, 2012, and 2013 reporting years. Under the methods in subpart I at this time, those data elements are not needed to comply with subpart I during those years. Given that the EPA is still considering longer-term responses to the petition, the EPA proposes to evaluate the confidentiality status of these data elements on a case-by-case basis, in accordance with existing CBI regulations in 40 CFR part 2, subpart B.
3. Inventory of all abatement systems through which fluorinated GHGs or N_2O flow at your facility.	Yes	The inventory of abatement systems at the facility may provide insight into the number of tools at the facility. Information on the type and number of tools at the facility coupled with production capacity could then enable competitors to reverse-engineer the facility's approximate manufacturing cost using the competitor's own tool operating costs. Disclosure of this type of cost information has the potential to undermine competition within the industry because it could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) in the industry. This could encourage weaker competitors to leave the industry prematurely or lead stronger competitors to adopt anticompetitive practices (such as predatory pricing) in an effort to force out weaker competitors.
4. Description of all abatement systems through which fluorinated GHGs or N_2O flow at your facility.	No	The description of abatement systems does not provide information about the specific processes being run at the facility; only provides information about the specific abatement system's being employed at the facility. Further, it does not provide insight to competitors about the type and number of process tools used at the facility, and does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).
5. Number of abatement devices of each manufacturer through which fluorinated GHGs or N_2O flow at your facility.	Yes	The number of abatement systems at the facility may provide insight into the number of tools at the facility. Information on the type and number of tools at the facility coupled with production capacity could then enable competitors to reverse-engineer the facility's approximate manufacturing cost using the competitor's own tool operating costs. Disclosure of this type of cost information has the potential to undermine competition within the industry because it could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) in the industry. This could lead stronger competitors to adopt anticompetitive practices (such as predatory pricing) in an effort to force out weaker competitors or encourage weaker competitors to leave the industry prematurely.
6. Model numbers of abatement devices through which fluorinated GHGs or N_2O flow at your facility.	No	Information on what type of abatement system is being used at the facility, including model numbers of abatement devices, does not provide insight into the type of processes being run at the facility. Further, it does not provide insight to competitors about the type and number of process tools used at the facility.
7. Destruction or removal efficiencies, if any, claimed by manufacturers of abatement devices through which fluorinated GHGs or N_2O flow at your facility.	No	The destruction or removal efficiencies do not provide insight about the specific process being run at the facility; this information should be available publically via a manufacturer's Web site/press materials. It should also be provided as part of the abatement system specifications.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
8. Description of the tools associated with each abatement system.	Yes	At a subpart I facility, disclosure of the type or description of manufacturing tools used for specific process steps would provide insight into how the reporting facility is configured and how it achieves its specific manufacturing performance. If information on a facility's tool types and manufacturing steps is revealed, a competitor could use this information to replicate the facility's manufacturing configuration, thereby undercutting the competitive advantage that the facility has built by achieving a higher level of manufacturing performance.
9. Model numbers of the tools associated with each abatement system.	Yes	At a subpart I facility, disclosure of the model numbers of manufacturing tools used for specific process steps would provide insight into the type of tool used and how the reporting facility is configured and achieves its specific manufacturing performance. If information on a facility's tool types and manufacturing steps is revealed, a competitor could use this information to replicate the facility's manufacturing configuration, thereby undercutting the competitive advantage that the facility has built by achieving a higher level of manufacturing performance.
10. The tool recipe(s),[3] process sub-type, or type associated with each abatement system.	Yes	At a subpart I facility, disclosure of the recipe(s), process sub-type, or type associated with each abatement system for specific process steps would provide insight into how the reporting facility is configured and achieves its specific manufacturing performance. If information on a facility's tool types and manufacturing steps is revealed, a competitor could use this information to replicate the facility's manufacturing configuration, thereby undercutting the competitive advantage that the facility has built by achieving a higher level of manufacturing performance.
11. Certification that the abatement systems for which controlled emissions are being reported are specifically designed for fluorinated GHG and N_2O abatement, including abatement system supplier documentation.	No	The abatement system certification does not provide any insight into the design or operation efficiencies of the plant or other information, that, if made publicly available, the release of which would be likely to result in substantial competitive harm. Moreover, certification statements will consist of only the language that the EPA publicly provides in the data reporting tool and will not include any facility- or process-specific information that could be considered exclusive.
12. A description of the abatement system class for which you are reporting controlled emissions.	No	The abatement system class description does not provide any information about the specific processes being run at the facility; it relates to the use of the random sampling abatement system testing program (RSASTP) (40 CFR 98.94(f)(4)); where the facility elects to directly measure the destruction removal efficiency (DRE), this information ensures that they have followed the RSASTP. This description does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).
13. The manufacturer of the abatement system in the class for which you are reporting controlled emissions.	No	The abatement system manufacturer does not provide any information about the specific processes being run at the facility; it relates to the use of the RSASTP; where the facility elects to directly measure the DRE, this information ensures that they have followed the RSASTP. This information does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
14. The model number of the abatement system in the class for which you are reporting controlled emissions.	No	The abatement system model number and class do not provide any information about the specific processes being run at the facility; they relate to the use of the RSASTP; where the facility elects to directly measure the DRE, this information ensures that they have followed the RSASTP. This information does not provide insight to competitors about the type and number of process tools used at the facility.
15. For each fluorinated HTF used, whether the emission estimate includes emissions from all applications or from only the applications specified in the definition of fluorinated HTFs in 40 CFR 98.98.	No	This information does not contain any process specific information; it is related to a flexibility provision that the EPA finalized in a separate action. The release of this information does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).
16. For reporting year 2012 only, the date on which you began monitoring emissions of fluorinated heat transfer fluids whose vapor pressure falls below 1 mm of Hg absolute at 25 degrees C.	No	This information does not provide details about the specific processes being run at the facility; it enables the EPA to ascertain the time-period for which fluorinated HTFs are being reported. The release of this information does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).

The "Unit/Process Operating Characteristics That Are Not Inputs to Emission Equations" Data Category

The EPA is proposing to assign 23 subpart I data elements to the "Unit/process Operating Characteristics That Are Not Inputs to Emission Equations" data category because they are characteristics of the abatement systems and other equipment, the facility conditions, and the products manufactured that vary over time with changes in operations and processes (and are not inputs to emission equations). Thirteen of these data elements are part of extension requests for the use of BAMM and generally relate to the reasons for a request and expected dates of compliance. Ten are part of the annual GHG report for 40 CFR part 98, subpart I. These 23 data elements are shown in Table 4 of this preamble along with their proposed confidentiality determination and the associated justification for the determination:

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY

Data element	Proposed to be confidential?	Justification
1. Annual manufacturing capacity of a facility as determined in Equation I–5.	No	This information is already publicly available through the World Fab Forecast,[4] a subscription-based report containing in-depth analysis down to the detail of each fab [or facility] in the electronics industry. The Forecast is published and updated quarterly by SEMI, the global industry association serving the manufacturing supply chains for the microelectronic, display and photovoltaic industries. The EPA reviewed the available capacity information and determined that, while those capacity data elements are generally publicly available, there may be facilities for which this data is not public. The EPA is proposing that the "annual manufacturing capacity of a facility as determined in Equation I–5" data element (item 1) not be treated as confidential, because it is already publicly available through the World Fab Forecast. The EPA seeks comment on this proposed determination.

[3] "Recipe" is a term of art in electronics manufacturing and is defined in 40 CFR 98.98 as a "specific combination of gases, under specific conditions of reactor temperature, pressure, flow, radio frequency (RF) power and duration, used repeatedly to fabricate a specific feature on a specific film or substrate".

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
2. For facilities that manufacture semiconductors, the diameter of wafers manufactured at a facility.	No	The diameter of wafers manufactured at a facility is already publicly available through the World Fab Forecast, a subscription-based report containing in-depth analysis down to the detail of each fab [or facility] in the semiconductor industry. The Forecast is published and updated quarterly by SEMI, the global industry association serving the manufacturing supply chains for the microelectronic, display and photovoltaic industries.
3. Film or substrate that was etched/cleaned and the feature type that was etched.	No CBI determination proposed in this rulemaking.	EPA was petitioned to reconsider the method and data elements related to the recipe-specific method and, as an initial response to that petition, the EPA is not requiring the reporting of these recipe-specific data elements for the 2011, 2012, and 2013 reporting years. Under the methods in subpart I at this time, those data elements are not needed to comply with subpart I during those years. Given that the EPA is still considering longer-term responses to the petition, the EPA proposes to evaluate the confidentiality status of these data elements on a case-by-case basis, in accordance with existing CBI regulations in 40 CFR part 2, subpart B.
4. Certification that the recipes included in a set of similar recipes are similar.	No CBI determination proposed in this rulemaking.	The EPA was petitioned to reconsider the method and data elements related to the recipe-specific method and, as an initial response to that petition, the EPA is not requiring the reporting of these recipe-specific data elements for the 2011, 2012, and 2013 reporting years. Under the methods in subpart I at this time, those data elements are not needed to comply with subpart I during those years. Given that the EPA is still considering longer-term responses to the petition, the EPA proposes to evaluate the confidentiality status of these certifications on a case-by-case basis, in accordance with existing CBI regulations in 40 CFR part 2, subpart B.
5. When you use factors for fluorinated GHG process utilization and by-product formation rates other than the defaults provided in Tables I–3, I–4, I–5, I–6, and I–7 and/or N_2O utilization factors other than the defaults provided in Table I–8, certification that the conditions under which the measurements were made for facility-specific N_2O utilization factors are representative of your facility's N_2O emitting production processes.	No	These certification statements are general in nature, do not reveal other information (e.g., market share, ability to increase production to meet new increases in demand, price structures), and do not provide any insight into the design or operation efficiencies of the plant that would likely result in substantial competitive harm. Moreover, the EPA certification statements consist only of the language that the EPA publicly provides in the data reporting tool and do not include any facility- or process-specific information that could be considered exclusive.
6. Destruction and removal efficiency measurement records for abatement system through which fluorinated GHGs or N_2O flow at your facility over its in-use life.	No	These measurement records are limited to information about the performance of the abatement systems and do not include information about the operating conditions around the abatement system or the manufacturing tool to which it is attached. Destruction efficiency information would not likely cause substantial competitive harm if released, because it does not provide any insight into novel, exclusive production methods that may have been developed by the facility.
7. Certification that the abatement system is installed, maintained, and operated according to manufacturer specifications.	No	These certification statements are general in nature, do not provide any insight into the design or operation efficiencies of the plant, and do not reveal other information (e.g., market share, ability to increase production to meet new increases in demand, price structures) that would likely result in substantial competitive harm. Moreover, the EPA certification statements consist only of the language that the EPA publicly provides in the data reporting tool and do not include any facility- or process-specific information that could be considered exclusive.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
8. The fluorinated GHG and N_2O in the effluent stream to the abatement system in the class for which you are reporting controlled emissions.	No	This data element does not include information on the quantity of gas(es) produced or the manufacturing tool that produces the gas(es). The type of fluorinated gas in the effluent stream would not likely cause substantial competitive harm if released, because all facilities use the same types of process gases that are typically found in effluent streams. The type of gas does not provide any insight into the costs of producing semiconductors at the facility or any novel production methods that may have been developed by the facility to improve manufacturing efficiencies, reduce manufacturing costs, or improve product performance.
9. The total number of abatement systems in that abatement system class for the reporting year.	Yes	The EPA finds that information relating to the number of abatement systems at the facility may provide insight into the number of tools at the facility. Information on the type and number of tools at the facility coupled with production capacity could then enable competitors to reverse-engineer the facility's approximate manufacturing cost using the competitor's own tool operating costs. Disclosure of this type of cost information has the potential to undermine competition within the industry because it could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. This could encourage weaker competitors to leave the industry prematurely or lead stronger competitors to adopt anticompetitive practices (such as predatory pricing) in an effort to force out weaker competitors.
10. The total number of abatement systems for which destruction or removal efficiency was measured in that abatement system class for the reporting year.	Yes	This data element refers to the statistical sample size of abatement systems that the facility analyzed in order to determine with sufficient statistical confidence the efficiency of all like abatement systems in that class. Subpart I specifies that 20 percent of the total number of abatement systems must be analyzed every year. Therefore, a competitor could use statistical sample size data to determine the total number of abatement systems at the facility. Since the EPA proposes that the total number of abatement systems is CBI, as described above, the EPA finds that the statistical sample size of abatement systems would likely cause substantial competitive harm if revealed.
11. Extension requests which request BAMM in 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type: Reasons why the needed equipment could not be obtained, installed, or operated or why the needed measurement service could not be provided before July 1, 2011.	Yes	The EPA has reviewed all BAMM use extension requests and determined that this data element contains detailed operational information, which could provide insight into configuration efficiencies that the facility has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on the facility's configuration, the competitor would be able to adopt the facility's efficiency practices with less development time or expense and would gain competitive advantage at the expense of the facility's competitive advantage.
12. Extension requests which request BAMM in 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type: If the reason for the extension is that the equipment cannot be purchased, delivered, or installed before July 1, 2011, include supporting documentation (e.g., backorder notices or unexpected delays or descriptions of actions taken to expedite delivery or installation).	No	This data element does not contain process diagrams, operational information, or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
13. Extension requests which request BAMM in 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type: If the reason for the extension is that service providers were unable to provide necessary measurement services, include supporting documentation demonstrating that these services could not be acquired before July 1, 2011. This documentation must include written correspondence to and from at least three service providers stating that they will not be available to provide the necessary services before July 1, 2011.	No	This data element does not contain detailed information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on regulatory requirements and administrative activities to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
14. Extension requests which request BAMM in 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type: Specific actions the owner or operator will take to comply with monitoring requirements by January 1, 2012.	No	This data element does not contain detailed information, such as process diagrams and operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
15. Extension requests which request BAMM in 2011 for recipe-specific utilization and by-product formation rates for plasma etching process type: Reasons why the needed equipment could not be obtained, installed, or operated or why the needed measurement service could not be provided before December 31, 2011.	Yes	The EPA has reviewed all BAMM use extension requests and determined that this data element contains detailed information, such as operational information, which could provide insight into configuration efficiencies that the facility has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on the facility's configuration, the competitor would be able to adopt the facility's efficiency practices with less development time or expense and would gain competitive advantage at the expense of the facility's competitive advantage.
16. Extension requests which request BAMM in 2011 for recipe-specific utilization and by-product formation rates for plasma etching process type: If the reason for the extension is that the equipment cannot be purchased, delivered, or installed before December 31, 2011, include supporting documentation (e.g., backorder notices or unexpected delays or descriptions of actions taken to expedite delivery or installation).	No	This data element does not contain detailed information, such as process diagrams and operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
17. Extension requests which request BAMM in 2011 for recipe-specific utilization and by-product formation rates for plasma etching process type: If the reason for the extension is that service providers were unable to provide necessary measurement services, include supporting documentation demonstrating that these services could not be acquired before December 31, 2011. This documentation must include written correspondence to and from at least three service providers stating that they will not be available to provide the necessary services before December 31, 2011.	No	This data element does not contain detailed information, such as process diagrams and operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
18. Extension requests which request BAMM in 2011 for recipe-specific utilization and by-product formation rates for plasma etching process type: Specific actions the owner or operator will take to comply with monitoring requirements by January 1, 2012.	No	This data element does not contain detailed information, such as process diagrams and operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
19. Extension requests which request BAMM beyond 2011: Explanation as to why the requirements cannot be met.	Yes	The EPA has reviewed all of BAMM use extension requests and determined that this data element may contain operational information, which could provide insight into configuration efficiencies that the facility has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on the facility's configuration, the competitor would be able to adopt the facility's efficiency practices with less development time or expense and would gain competitive advantage at the expense of the facility's competitive advantage.
20. Extension requests which request BAMM beyond 2011: Description of the unique circumstances necessitating an extension, including specific technical infeasibilities that conflict with data collection.	No	This data element does not contain detailed operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
21. Extension requests which request BAMM beyond 2011: Description of the unique circumstances necessitating an extension, including specific data collection issues that do not meet safety regulations or specific laws or regulations that conflict with data collection.	No	This data element does not contain detailed information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
22. Extension requests which request BAMM beyond 2011: Explanation and supporting documentation of how the owner or operator will receive the required data and/or services to comply with the reporting requirements.	No	This data element does not contain process diagrams or operational information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
23. Extension requests which request BAMM beyond 2011: Explanation and supporting documentation of when the owner or operator will receive the required data and/or services to comply with the reporting requirements.	Yes	This data element could reveal information about the installation date of equipment and the date of anticipated startup. This could provide sensitive information regarding future process shutdowns or capacity increases, and likely would cause substantial competitive harm if disclosed, because competitors could use this information to anticipate and potentially benefit from future increases or decreases in product supply. For example, a competitor able to anticipate the shutdown or the increase in capacity of a reporter's facility and resulting decrease or increase in product supply could use this information to attract customers from a facility by increasing its own production or by adjusting the price of its own products.

E. Commenting on the Proposed Confidentiality Determinations in Two Direct Emitter Categories

We seek comment on the proposed confidentiality status of data elements in two direct emitter data categories ("Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" and "Unit/Process Operating Characteristics That are Not Inputs to Emission Equations"). By proposing confidentiality determinations prior to data reporting through this proposal and rulemaking process, we provide potential reporters an opportunity to submit comments identifying data they consider sensitive and the rationales and supporting documentation, same as those they would otherwise submit for case-by-case confidentiality determinations. We will evaluate claims of confidentiality before finalizing the confidentiality determinations. Please note that this will be reporters' only opportunity to substantiate your confidentiality claim. Upon finalization of this rule, the EPA will release or withhold subpart I data in accordance with 40 CFR 2.301, which contains special provisions governing the treatment of 40 CFR part 98 data for which confidentiality determinations have been made through rulemaking.

Please consider the following instructions in submitting comments on the data elements in subpart I.

Please identify each individual data element you do or do not consider to be CBI or emission data in your comments. Please explain specifically how the public release of that particular data element would or would not cause a competitive disadvantage to a facility. Discuss how this data element may be different from or similar to data that are already publicly available. Please submit information identifying any publicly available sources of

[4] *http://www.semi.org/en/Store/MarketInformation/fabdatabase/ctr_027238.*

information containing the specific data elements in question, since data that are already available through other sources would not be CBI. In your comments, please identify the manner and location in which each specific data element you identify is available, including a citation. If the data are physically published, such as in a book, industry trade publication, or federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and ISBN or other identifier. For data published on a Web site, provide the address of the Web site and the date you last visited the Web site and identify the Web site publisher and content author.

If your concern is that competitors could use a particular input to discern sensitive information, specifically describe the pathway by which this could occur and explain how the discerned information would negatively affect your competitive position. Describe any unique process or aspect of your facility that would be revealed if the particular data element you consider sensitive were made publicly available. If the data element you identify would cause harm only when used in combination with other publicly available data, then describe the other data, identify the public source(s) of these data, and explain how the combination of data could be used to cause competitive harm. Describe the measures currently taken to keep the data confidential. Avoid conclusory and unsubstantiated statements, or general assertions regarding potential harm. Please be as specific as possible in your comments and include all information necessary for the EPA to evaluate your comments.

IV. Background and Rationale for the Proposed Amendments to the Best Available Monitoring Method Provisions

Following the publication of the final subpart I rule in the **Federal Register**, an industry association requested reconsideration of numerous provisions in the final rule. The proposed amendments in this action are in response to the request for reconsideration of the specific provision that requires facilities that have been granted extensions to use best available monitoring methods (BAMM) to recalculate their emissions for the time period for which BAMM was used at a later date using methods that are fully compliant with subpart I. The other amendments that have been made to date are also related to the reconsideration petition.

As mentioned above in Section II.C of this preamble, the EPA is finalizing technical corrections and revisions regarding the definition of fluorinated HTFs and the provisions to estimate and report emissions of fluorinated HTFs in a separate action.

As finalized in December 2010, subpart I allowed facilities to use BAMM without going through an application process until July 1, 2011. In 2011, the EPA published other amendments to subpart I, including several related to the BAMM provisions. On June 22, 2011, the EPA extended the period in subpart I for using the BAMM provisions without going through an application process to September 30, 2011 (76 FR 36339). Under the September 27, 2011 amendments to subpart I, this initial BAMM period was extended through December 31, 2011. Facilities were given until October 17, 2011 to apply for an extension beyond this initial period. Under subpart I, facilities could apply to use BAMM after December 31, 2011 for any parameter for which it is not reasonably feasible to acquire, install, or operate a required piece of monitoring equipment in a facility, or to procure necessary measurement services (40 CFR 94(a)(1)).

Also on September 27, 2011, the EPA amended the calculation and monitoring provisions for large semiconductor manufacturing facilities that fabricate devices on wafers measuring 300 millimeters or less in diameter (76 FR 59542). The large semiconductor manufacturing facilities are those that have an annual manufacturing capacity of greater than 10,500 square meters of substrate. For reporting years 2011, 2012, and 2013, these amendments allow the large semiconductor facilities the option to calculate emissions using default emission factors already contained in subpart I, instead of using recipe-specific utilization and by-product formation rates for the plasma etching process type.

The EPA is proposing to amend subpart I to remove the requirement that facilities that are granted an extension to use BAMM must recalculate and resubmit the emissions estimate for the BAMM extension period. Currently, subpart I requires facilities, after the end of the period for which they have been granted a BAMM extension, to recalculate and resubmit all emissions after they have begun following all applicable monitoring methods of subpart I. The September 27, 2011 amendments did not alter the BAMM recalculation provisions in subpart I.

Under 40 CFR 98.94(a)(2) and (3), a facility granted an extension "through December 31, 2011", per the original schedule in the rule, must include recalculated 2011 emissions in its 2012 emission report due in 2013, unless it receives an additional extension. Under 40 CFR 98.94(a)(4), a facility granted an extension beyond December 31, 2011, must include recalculated 2012 emissions in its 2013 emission report due in March 2014. Under 40 CFR 98.94(a)(2) and (a)(4), facilities are not required to verify their 2011 and 2012 BAMM engineering model for apportioning gas consumption in their recalculated report.

The petitioners have noted that in the case of subpart I, the requirement for facilities to recalculate emissions in full compliance with subpart I would require them to implement data collection at a level of detail that is not currently feasible for all facilities using the BAMM provisions.

Industry members that are applying for BAMM extensions have noted that, although they have systems to track data that are pertinent to processing of wafers and determining tool capacities and manufacturing efficiency, those systems are not currently designed to apportion gas usage to any particular recipe or tool, or to produce the apportioning factors required by the rule. They have also noted that they will not have the systems in place (including hardware and software upgrades) to collect the data needed to develop heel factors, and to track abatement system up-time according to subpart I.

The petitioners also noted that the compliance schedule for subpart I does not provide adequate time for facilities using BAMM to implement the data collection needed to recalculate emissions at a later date. The final subpart I was published on December 1, 2010, and became effective on January 1, 2011. On January 1, 2011, a facility would have needed some method in place to track the chemicals, the flow stabilization times, reactor pressure, individual gas flow rates, and applied radio frequency power.

After considering these requests, the EPA is proposing to remove the requirements to recalculate and resubmit all emission estimates for subpart I. The EPA has determined that there may be significant burden imposed by a broad recalculation requirement for subpart I. In addition, the EPA's ongoing consideration of potential further revisions to the calculation and monitoring requirements complicates the recalculation requirement. For example, while the agency may want to evaluate the feasibility of a recalculation requirement for any new methodologies,

we do not believe the automatic imposition of a recalculation requirement is appropriate at this time. Finally, it is important to note, the majority of the other subparts of Part 98 with specific BAMM provisions do not require facilities to recalculate or resubmit emission estimates after the BAMM period has been completed. We have, therefore, concluded that it is not necessary to require facilities that have been granted extensions to use best available monitoring methods to recalculate their emissions for the time period for which BAMM was used at a later date using calculation methods in subpart I.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

As previously mentioned, this action proposes confidentiality determinations and proposes amended reporting methodologies in subpart I that would reduce the data collection burden for certain facilities. This action does not increase the reporting burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in subpart I, under 40 CFR part 98, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) documents prepared by the EPA have been assigned OMB control number 2060–0650 for subpart I. The OMB control numbers for the EPA's regulations in 40 CFR are listed at 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this re-proposal on small entities, "small entity" is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This action proposes confidentiality determinations and proposes amended reporting methodologies in subpart I that would reduce the data collection burden for certain facilities. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are facilities included in NAICS codes for Semiconductor and Related Device Manufacturing (334413) and Other Computer Peripheral Equipment Manufacturing (334119). As shown in Tables 5–13 and 5–14 of the Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Final Rule (74 FR 56260, October 30, 2009) available in docket number EPA–HQ–OAR–2008–0508, the average ratio of annualized reporting program costs to receipts of establishments owned by model small enterprises was less than 1% for industries presumed likely to have small businesses covered by the reporting program.

The EPA took several steps to reduce the impact of Part 98 on small entities. For example, the EPA determined appropriate thresholds that reduced the number of small businesses reporting. For some source categories, the EPA developed tiered methods that are simpler and less burdensome. In addition, the EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. Finally, the EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform the EPA's understanding of key issues for the industries.

We continue to be interested in the potential impacts of this action on small entities and welcome comments on issues related to such effects.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This action, which is proposing confidentiality determinations and amended reporting methodologies in subpart I that would reduce the data collection burden for certain facilities, does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This action does not increase the reporting burden. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

In developing Part 98, the EPA consulted with small governments pursuant to a plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of the EPA's consultations with state and/or local officials or other representatives of state and/or local governments in developing Part 98, see Section VIII.D of the preamble to the final rule (74 FR 56370, October 30, 2009).

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. However, for a

more detailed discussion about how Part 98 relates to existing state programs, please see Section II of the preamble to the final rule (74 FR 56266, October 30, 2009).

This action, which is proposing confidentiality determinations and amended reporting methodologies in subpart I that would reduce the data collection burden, would only apply to certain electronics manufacturers. No state or local government facilities are known to be engaged in the activities that would be affected by the provisions in this proposed rule. This action also does not limit the power of states or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials. For a summary of the EPA's consultation with state and local organizations and representatives in developing Part 98, see Section VIII.E of the preamble to the final rule (74 FR 56371, October 30, 2009).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action, which proposes confidentiality determinations and proposes amended reporting methodologies in subpart I that would reduce the data collection burden for certain facilities, does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). No tribal facilities are known to be engaged in the activities affected by this action. Thus, Executive Order 13175 does not apply to this action. For a summary of the EPA's consultations with tribal governments and representatives, see Section VIII.F of the preamble to the final rule (74 FR 56371, October 30, 2009). The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)). It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action does not increase the reporting burden. The proposed rule amendments in this action do not impose any significant changes to the current reporting requirements contained in 40 CFR part 98, subpart I; rather, the proposed amendments to the reporting requirements would only affect certain electronics manufacturers. Therefore, this action is not subject to Executive Order 13211.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses only reporting and recordkeeping procedures.

List of Subjects 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: February 10, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

2. Section 98.94 is amended by revising paragraphs (a)(2)(iii), (a)(3)(iii), and (a)(4)(iii) to read as follows:

§ 98.94 Monitoring and QA/QC requirements.

(a) * * *

(2) * * *

(iii) *Approval criteria.* To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that by July 1, 2011, it is not reasonably feasible to acquire, install, or operate the required piece of monitoring equipment, or procure necessary measurement services to comply with the requirements of this subpart.

(3) * * *

(iii) *Approval criteria.* To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that by December 31, 2011 it is not reasonably feasible to acquire, install, or operate the required piece of monitoring equipment or procure necessary measurement services to comply with the requirements of this subpart.

(4) * * *

(iii) *Approval criteria.* To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that by December 31, 2011 (or in the case of facilities that are required to calculate and report emissions in accordance with § 98.93(a)(2)(ii)(A), December 31, 2012), it is not reasonably feasible to acquire, install, or operate the required piece of monitoring equipment according to the requirements of this subpart.

* * * * *

[FR Doc. 2012–3778 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[EPA–HQ–SFUND–2011–0965; FRL–9636–1]

Designation of Hazardous Substances; Designation, Reportable Quantities, and Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to reinstate the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations by a November 8, 2000 final rule. Also, in the "Rules and Regulations" section of this **Federal Register**, EPA is reinstating the same maximum observed constituent concentrations via a direct final rule without a prior proposed rule. If we receive no adverse comment, the direct final rule will become effective, and we will not take further action on this proposed rule.

DATES: Written comments must be received by March 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2011–0965, by mail to the Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the "Rules and Regulations" section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this proposed rule, contact Lynn Beasley at (202) 564–1965 (*beasley.lynn@epa.gov*), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to reinstate the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations by a November 8, 2000 final rule. The listed hazardous wastes and the respective reportable quantities are included in the regulations for Hazardous Substances and Reportable Quantities. We have published a direct final rule to reinstate the maximum observed constituent concentrations in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, however, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

Type of entity	Examples of affected entities
Federal Agencies	National Response Center and any Federal agency that may release or respond to releases of hazardous substances.
State and Local Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Responsible Parties	Those entities responsible for the release of a hazardous substance from a vessel or facility. Those entities with an interest in the substances that were inadvertently removed from the table of maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172 in 40 CFR 302.6(b)(1)(iii).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. What does this amendment do?

This proposed rule would reinstate the maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172 to the table found in 40 CFR

302.6(b)(1)(iii). A November 8, 2000 final rule (Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restriction for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Final Rule) inadvertently removed the maximum observed constituent concentrations for those listed hazardous wastes from the table in that section when it was amended to include the maximum observed constituent concentrations for listed hazardous wastes K174 and K175. (*See* 65 FR 67132.) The maximum observed constituent concentrations were included in the 40 CFR 302.6 regulations to allow generators, transporters, and disposal facilities handling these wastes to calculate reportable quantities (RQs) using the mixture rule [1] developed in connection with the Clean Water Act section 311 regulations. The listed hazardous wastes K169, K170, K171, and K172 and their respective RQs are included in Table 302.4—List of Hazardous Substances and Reportable Quantities and Appendix A to section 302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances of Title 40 of the Code of Federal Regulations. However, the aforementioned Table 302.4 and Appendix A do not contain the maximum observed constituent concentrations. Section 302.6 is the only source of these maximum observed constituent concentrations contained in 40 CFR 302—Designation, Reportable Quantities, and Notification.

IV. Statutory and Executive Order reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 14, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. In § 302.6, paragraph (b)(1)(iii), the table is amended by adding entries K169, K170, K171, and K172 in numerical order to read as follows:

§ 302.6 Notification requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

Waste	Constituent	Max ppm
K169	Benzene	220.0
K170	Benzene	1.2
	Benzo (a) pyrene	230.0
	Dibenz (a,h) anthracene	49.0
	Benzo (a) anthracene	390.0
	Benzo (b) fluoranthene	110.0
	Benzo (k) fluoranthese	110.0
	3-Methylcholanthrene	27.0
	7, 12-Dimethylbenz (a) anthracene	1,200.0
K171	Benzene	500.0
	Arsenic	1,600.0
K172	Benzene	100.0
	Arsenic	730.0

* * * * * * *

* * * * *

[FR Doc. 2012–4059 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

[1] 44 FR 50767, Aug. 29, 1979, Final Rulemaking; Water Programs; Determination of Reportable Quantities for Hazardous Substances; and 50 FR 13463, Apr. 4, 1985, Final rule; Notification Requirements; Reportable Quantity Adjustments. Discharges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its reportable quantity.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2012–0135; FRL–9339–5]

Fishing Tackle Containing Lead; Disposition of Petition Filed Pursuant to TSCA Section 21

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition, reasons for Agency response.

SUMMARY: On November 17, 2011, EPA received a petition from the Center for Biological Diversity, the Loon Lake Loon Association, and Project Gutpile (petitioners). The petitioners cited section 21 of the Toxic Substances Control Act (TSCA) and requested EPA to initiate a rulemaking under section 6(a) of TSCA applicable to fishing tackle containing lead (e.g., fishing weights, sinkers, lures, jigs, and/or other fishing tackle), of various sizes and uses that are ingested by wildlife, resulting in lead exposure. After careful consideration, EPA denied the petition by letter dated

February 14, 2012. This notice explains EPA's reasons for the denial.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Thomas Groeneveld, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–1188; fax number: (202) 566–0470; email address: *groeneveld.thomas@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, import, or distribute in commerce fishing tackle containing lead. Since other entities may also be interested, 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 technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I access information about this petition?

EPA has established a record for this petition response under docket identification (ID) number EPA–HQ–OPPT–2012–0135. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. TSCA Section 21

A. What is a TSCA section 21 petition?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register.** A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or the expiration of the 90-day period if EPA fails to respond within 90 days.

B. What criteria apply to a decision on a TSCA section 21 petition?

Section 21(b)(1) of TSCA requires that the petition "set forth the facts which it is claimed establish that it is necessary" to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate this petition.

III. Summary of the Petition

On November 17, 2011, the Center for Biological Diversity, the Loon Lake Loon Association, and Project Gutpile petitioned EPA to "evaluate the unreasonable risk of injury to the environment from fishing tackle containing lead (including fishing weights, sinkers, lures, jigs, and/or other tackle) of various sizes and uses that are ingested by wildlife resulting in lead exposure" and to "initiate a proceeding for the issuance of a rulemaking under section 6(a) of TSCA to adequately protect against such risks" (Ref. 1, p. 27). The petition expressly states that this petition "asks the EPA to initiate a rulemaking for regulations that adequately protect wildlife against the unreasonable risk of injury from lead fishing tackle * * *. This petition does not request a specific regulatory alternative. It is the obligation of the EPA to determine the least burdensome alternative that adequately addresses the unreasonable risk of injury" (Ref. 1, p. 8). As such, the petition does not actually identify a rule to be issued, amended, or repealed.

This is not the first time EPA has been petitioned to take action with respect to fishing tackle containing lead. On August 3, 2010, the Center for Biological Diversity, American Bird Conservancy, Association of Avian Veterinarians, Project Gutpile, and Public Employees for Environmental Responsibility filed a petition under TSCA section 21 requesting that EPA prohibit under TSCA section 6(a) the manufacture, processing, and distribution in commerce of lead fishing gear (Ref. 2). In particular, the 2010 petitioners requested a nationwide, uniform ban on the manufacture, processing, and distribution in commerce of lead for use in all fishing gear, regardless of size, including sinkers, jigs, and other tackle. EPA denied the petition on November 4, 2010 (Ref. 2). The comments that EPA received from states and a state organization about the 2010 petition highlighted the geographic focus of state controls on lead fishing tackle (Ref. 2). Several state fish and game agencies submitted comments, all supporting denial of the petition (Ref. 2).

Additionally, on October 20, 1992, the Environmental Defense Fund, Federation of Fly Fishers, Trumpeter Swan Society, and North American Loon Fund petitioned EPA under section 21 of TSCA and the Administrative Procedure Act to initiate rulemaking procedures under section 6(a) of TSCA to require that the sale of lead fishing sinkers be accompanied by an appropriate label or notice warning that such products are toxic to wildlife (Ref. 3). EPA granted the petition and, ultimately, in 1994, EPA proposed a rule under section 6(a) of TSCA to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass (59 FR 11122, March 9, 1994). EPA received

comments from many states or state agencies in response to the 1994 proposal; the majority of these comments argued that Federal action was not warranted. That proposal has not been finalized and in 2005 EPA indicated its intent to withdraw the proposal (70 FR 27625, May 16, 2005). Given limited resources and competing priorities, EPA has not yet formally withdrawn the proposal but is currently taking steps to do so.

IV. Disposition of Petition Filed Pursuant to TSCA Section 21

A. What is EPA's response?

On February 14, 2012, EPA denied the November 2011 petition. A copy of the Agency's response, which consists of a letter to the petitioners, is available in the docket for this petition. EPA's reasons for denying the petition are provided in Unit IV.B.

B. What are EPA's reason for this denial?

In denying the petitioners' request, EPA determined that the petitioners did not demonstrate that Federal action is necessary based, in part, on the fact that the petitioners' supporting data indicate that the issue of wildlife exposure to fishing tackle containing lead has a regional or local geographic context coupled with the fact that the states where risk of injury appears to be greatest (based on documented incidences) are largely the states that have taken action to address the risks posed by lead fishing tackle. While several species of waterfowl are included, the most extensive information provided in the petition pertains to the ingestion by loons of fishing tackle containing lead and indicates that common loons are known to ingest lead objects more frequently than other species of water birds sampled across the United States. For loons, most of the documented cases of lead tackle ingestion cited in the petition are for the time period between 1987 and 2002 and are confined to northern states, all of which are located on or near the northern border of the United States. The U.S. Fish and Wildlife Service report cited in the petition also indicates that loon populations are stable or increasing in all of these northern states where lead tackle ingestion by loons has been documented, with the exception of Washington. While such examples suggest harm to wildlife, and waterfowl in particular, they do not, in and of themselves, demonstrate that Federal rulemaking under section 6(a) of TSCA is necessary.

Indeed, as evidenced by the petition, since 2000, a number of states have established regulations that ban or restrict the use of lead tackle. In addition, a number of other states have created state education and/or fishing tackle exchange programs. In light of the emergence and expansion of these programs and other activities over the past decade coupled with a paucity of data on bird mortality attributable to lead tackle ingestion during this same timeframe, the petition does not suffice to establish that a Federal action under section 6(a) of TSCA as requested by the petitioners is necessary to adequately protect wildlife.

Specifically, since 2000, Maine, Massachusetts, New Hampshire, New York, Vermont, and Washington have banned or limited the use of fishing sinkers. Maine, New York, and Vermont have banned the sale of lead fishing sinkers of less than one-half ounce. Two states, Massachusetts and New Hampshire, have expanded the scope of water bodies covered by use prohibitions over time. In Massachusetts, the use of all lead sinkers was initially prohibited in the Quabbin and Wachusett Reservoirs, the loons' primary habitat in the state. The Massachusetts regulations expanded the use prohibitions, effective in 2012, to include additional tackle—lead weights, and lead fishing jigs of less than one ounce—and to encompass all inland waters. In New Hampshire, initial use prohibitions for fishing sinkers and jigs were expanded from lakes and ponds to all waters of the state in 2006. In 2011, Washington State began to regulate fishing tackle containing lead by approving measures to prohibit the use of fishing tackle containing lead at lakes with nesting common loons. EPA also notes that other states (e.g., Minnesota and Wisconsin) have voluntary education or outreach programs, including efforts to discourage the use of fishing tackle containing lead, to raise awareness of lead poisoning in wildlife, and events to exchange fishing tackle containing lead for lead-free alternatives.

Thus, the trend is that states are being responsive to the harms attributed to fishing tackle containing lead by implementing regulatory and voluntary programs.

For example, EPA notes that among the states where the petition cites documented cases of lead tackle ingestion by loons, five of the states regulate the use or sale of fishing tackle containing lead and have been doing so since at least 2006. Further, EPA notes that two states with voluntary programs are among the same states. In other words, the states where ingestion of fishing tackle containing lead is best linked to loon mortality have responded with regulatory or voluntary programs. In some cases, these programs have expanded over time. The petition does not demonstrate that these state and local efforts are ineffective or have failed to reduce the exposure and risks presented to waterfowl in particular. In light of these state actions, EPA concludes that the petition does not demonstrate that action under TSCA section 6(a) is necessary to adequately protect wildlife.

EPA also notes that when Federal actions have been taken to address the use of lead fishing tackle in federally managed lands and water bodies across the nation, they have been limited to specific, localized National Wildlife Refuges, not the entire National Wildlife Refuge System. For example, use of fishing tackle containing lead is prohibited in several wildlife refuges, including in states with breeding loon populations such as Rachel Carson National Wildlife Refuge in Maine, Seney National Wildlife Refuge in Michigan, and Red Rock Lakes National Wildlife Refuge in Montana.

Moreover, EPA recognizes that state and local natural resource agencies consider geographic context in their resource assessments, and manage these resources based on evaluations of local impacts on fish and wildlife resources and habitats. EPA also is cognizant that these state and local agencies historically have made such evaluations while considering the societal benefits of traditional fishing practices. This perspective is supported by the vast majority of comments received from states and members of the general public on the petition submitted on August 3, 2010 (Ref. 2) and the section 6(a) rule proposed by EPA on March 9, 1994 (59 FR 11122).

In response to the petition submitted on August 3, 2010, EPA received comments from states and a state organization that highlight the geographic focus of state controls on lead fishing tackle. According to the Association of Fish and Wildlife Agencies, "the exposure to certain migratory birds (primarily loons, and to a lesser extent, swans) and related impacts to populations of those birds is localized, and where impacts have been substantiated to be significant, state fish and wildlife agencies have acted to regulate the use of lead sinkers and jigs. In the northeast, five states have enacted restrictions (e.g., ban in certain bodies of water; ban on certain weights and sizes) on the use of lead fishing tackle where studies have identified lead toxicosis as

a contributing factor to declining loon populations. Some states are also offering a fishing tackle exchange program (non-lead for lead products). States have thus demonstrated a responsible exercise of their authority to regulate or restrict lead fishing tackle under circumstances of exposure where it contributes to decline in loon populations" (Ref. 2).

All state agencies that commented on the 2010 petition supported the denial of the petition and provided several reasons why Federal action is unwarranted (Ref. 2). These comments assert that mortality from ingestion of lead fishing tackle is rare and is primarily limited to some areas of the country, that states are already working closely with the U.S. Fish and Wildlife Service on education and exchange programs, and that where there have been impacts on loons and trumpeter swans, states have already taken action. These states contend that, because policy development is biologically, socially, and economically complex, these impacts are best addressed by geographically targeted actions that the states are undertaking. As noted by these commenters, states in the northern part of the country, where the majority of the impacts on loons in particular have been observed, have taken action to limit or ban the use of lead sinkers or have implemented tackle exchange programs.

In addition, comments received on the 2010 petition from Members of Congress, representing two different states (e.g., Arkansas and Wisconsin), also opposed Federal action on lead fishing tackle (Ref. 2). A Representative from Wisconsin opposed a prohibition on lead fishing tackle in favor of voluntary education and outreach programs (Ref 2).

These comments were consistent with the comments EPA received in response to the 1994 proposal. In their comments on the 1994 proposed rule, numerous state fish and wildlife management agencies from across the U.S. commented that they did not believe that the data as a whole (e.g., exposure information, limited incidents of lead toxicity linked to tackle, number of specific species likely to be affected, geographic nature of the issue), support the need for a nationwide ban on fishing tackle containing lead. Many of these states also strongly expressed their opinion that they, as state fish and wildlife agencies, have the best knowledge of the status of bird populations in their states and are therefore best suited to identify if their wildlife resources are impacted, and to determine what the most appropriate management actions should be, if any. In total, the vast majority of these comments opposed the prohibitions in the 1994 proposed rule.

These comments and the actions taken by states reinforce EPA's conclusion that petitioners have not shown that Federal action under TSCA section 6(a) is necessary to protect wildlife resources at this time.

EPA also recognizes that the market for fishing tackle and equipment continues to change and that the prevalence of non-lead alternatives in the marketplace continues to increase. While fishing tackle containing lead may still constitute the largest percentage of the market, the availability of lead-free alternatives has increased in the last decade (Ref. 2). New non-lead products have entered the market, and the market share of lead sinkers has decreased (Ref. 2). With improvements in technology, changes in consumer preferences, state-level restrictions, and increased market competition, the market for lead fishing sinkers is expected to continue to decrease while the market for substitutes such as limestone, steel, and tungsten fishing sinkers is expected to continue to increase. (Ref. 2). In light of these trends, the petition does not demonstrate that rulemaking is necessary under TSCA section 6(a).

In sum, EPA is not persuaded that the action requested by the petitioners is necessary given the mix of regulatory and education actions states agencies and the Federal Government already are taking to address the impact of lead fishing tackle on local environments. The risk described by the petitioners does appear to be more prevalent in some geographic areas than others, and the trend over the past decade has been for increasing state and localized Federal activity regarding lead in fishing tackle. Therefore, EPA concludes that the petition does not demonstrate that action under TSCA section 6(a) is necessary in light of these state and Federal actions.

Furthermore, for the same reasons stated in this unit, while the petition does provide evidence of exposure and a risk to waterfowl in some areas of the United States, it does not provide a basis for finding that the risk presented is an unreasonable risk. "The finding of unreasonable risk is a judgment under which the decision-maker determines that the risk of health or environmental injury from the chemical substance or mixture outweighs the burden to society of potential regulations" (59 FR 11122, 11138). Again, the risk described by the petitioners appears to be more prevalent in some geographic areas than others, and the trend over the past decade has been for increasing state and localized Federal activity regarding lead in fishing tackle. Given the mix of regulatory and educational actions state agencies and the Federal Government already are taking to address the impact of lead fishing tackle on local environments, and the other considerations described in Unit IV.B., the petition does not demonstrate that exposure from lead fishing tackle presents an unreasonable risk.

Finally, although EPA proposed to make a finding that lead fishing tackle presented an unreasonable risk in 1994, the Agency did not finalize that rule and indicated its intent to withdraw the proposal in 2005 (70 FR 27625). The Agency's view that the proposal should be withdrawn is buttressed by the emergence and continued expansion of state and local programs in the states that appear to be most affected. Likewise, other data and information (e.g., incidents of lead tackle ingestion and mortality in certain species of waterfowl) that supported that proposal are clearly outdated. To the extent that petitioners rely on that proposal, their reliance is unpersuasive.

For these reasons, EPA denied the petitioners' request.

V. References

The following is a list of the documents that are specifically referenced in this notice and placed in the docket that was established under docket ID number EPA–HQ–OPPT–2012–0135. For information on accessing the docket, refer to Unit I.B.

1. Center for Biological Diversity, Loon Lake Loon Association, Project Gutpile. Petition to the Environmental Protection Agency to Regulate Lead Fishing Tackle Under the Toxic Substances Control Act; Petition. (November 16, 2011). Available online at: *http://www.epa.gov/oppt/chemtest/pubs/TSCA_sinker_petition.pdf.*
2. U.S. Environmental Protection Agency. Lead Fishing Sinkers and Ammunition Components; Docket. Docket ID: EPA–HQ–OPPT–2010–0681. Available online at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EPA–HQ–OPPT–2010–0681.*
3. Environmental Defense Fund, Federation of Fly Fishers, the Trumpeter Swan Society, and the North American Loon Fund. Petition to EPA Administrator William K. Reilly pursuant to the Toxic Substances Control Act, and the Administrative Procedure Act; Petition (October 20, 1992).

List of Subjects

Environmental protection, Bird, Lead, Lead fishing sinkers, Lead fishing tackle.

Dated: February 14, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–4087 Filed 2–21–12; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 68

[Docket No. NIH–2008–0003]

RIN 0905–AA43

National Institutes of Health Loan Repayment Programs

AGENCY: National Institutes of Health, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to rescind the current regulations governing two of its eight loan repayment programs and issue in their place a new consolidated set of regulations governing all of the NIH Loan Repayment Programs (LRPs). There are currently eight programs, including three for researchers employed by the NIH (Intramural LRPs) and five for non-NIH scientists (Extramural LRPs). The Intramural LRPs include the Loan Repayment Program for Research with Respect to Acquired Immune Deficiency Syndrome (or AIDS Research LRP); Loan Repayment Program for General Research (or General Research LRP), which includes a program for the Accreditation Council for Graduate Medical Education (ACGME) Fellows; and Loan Repayment Program for Clinical Researchers from Disadvantaged Backgrounds (or Clinical Research LRP for Individuals from Disadvantaged Backgrounds). The Extramural LRPs include the Loan Repayment Program for Contraception and Infertility Research (or Contraception and Infertility Research LRP); Loan Repayment Program for Clinical Researchers from Disadvantaged Backgrounds (or Clinical Research LRP for Individuals from Disadvantaged Backgrounds); Loan Repayment Program for Clinical Research (or Clinical Research LRP); Loan Repayment Program for Pediatric Research (or Pediatric Research LRP); and Loan Repayment Program for Health Disparities Research (or Health Disparities Research LRP). This rule compliments efforts afforded by EO 13563.

DATES: Comments must be received on or before April 23, 2012 in order to ensure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Persons and organizations interested in submitting comments, identified by RIN 0925–AA43 and Docket Number NIH–2008–0003, may do so by any of the following methods:

Electronic Submissions: You may submit electronic comments in the following way:

- *Federal eRulemaking Portal: Follow the instructions for submitting comments.*

To ensure timelier processing of comments, NIH is no longer accepting comments submitted to the agency by email. The NIH encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal: *http://www.regulations.gov.*

Written Submissions: You may submit written comments in the following ways:

- *Fax:* 301–402–0169.
- *Mail:* Attention Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669.
- *Hand delivery/courier (for paper, disk, or CD–ROM submissions):* Attention: Jerry Moore, 6011 Executive Boulevard, Suite 601, Rockville, MD 20852–7669.

Docket: For access to the docket to read background documents or comments received, go to the eRulemaking Portal and insert the docket number provided in brackets in the heading on page one of this document into the "Search" box and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20892; by email *MooreJ@mail.nih.gov*; by fax 301–402–0169; or *mailto:MooreJ@mail.nih.gov. mailto:(jm40z@nih.gov*) by telephone 301–496–4607 (not a toll-free number) for information about the rulemaking process. For program information contact: the NIH Division of Loan Repayment by email *lrp@nih.gov* or telephone 866–849–4047. Information regarding the requirements, application deadline dates, and an online application for the NIH Loan Repayment Programs may be obtained from the NIH Loan Repayment Program Web site, *www.lrp.nih.gov.*

SUPPLEMENTARY INFORMATION: On November 4, 1988, Congress enacted the Health Omnibus Programs Extension of 1988, Public Law (Pub. L.) 100–607, Title VI of which amended the Public Health Service (PHS) Act by adding section 487A (42 U.S.C. 288–1) entitled Loan Repayment Program for Research with Respect to Acquired Immune Deficiency Syndrome. Subsequently, in the NIH Revitalization Act of 1993 (Pub. L. 103–43), Congress enacted the Loan Repayment Program for Research with Respect to Contraception and Infertility (section 487B; 42 U.S.C. 288–2); the Loan Repayment Program for Research Generally (section 487C; 42 U.S.C. 288–3); and the Loan Repayment Program for Clinical Researchers from Disadvantaged Backgrounds (section 487E; 42 U.S.C. 288–5). The Children's Health Act of 2000 (Pub. L. 106–310), which was enacted on October 17, 2000, added the Pediatric Research Loan Repayment Program (section 487F;[1] 42 U.S.C. 288–6). On November 13, 2000, the Clinical Research Enhancement Act, contained in the Public Health Improvement Act of 2000 (Pub. L. 106–505), enacted the Loan Repayment Program for Clinical Research (section 487F;[2] 42 U.S.C. 288–5a). On November 22, 2000, the Minority Health and Health Disparities Research and Education Act of 2000 (Pub. L. 106–525) enacted the Loan Repayment Program for Health Disparities Research (section 485G, redesignated 464z–5;[3] 42 U.S.C. 285f–2).

Sections 487A, 487B, 487C, 487E, and 487F of the PHS Act authorize the Secretary of Health and Human Services, and section 464z–5 authorizes the Director, National Institute on Minority Health and Health Disparities (NIMHD), to enter into contracts with qualified health professionals under which such professionals agree to conduct research in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and

[1] So in law. There are two sections 487F. Section 1002(b) of Public Law 106–310 (114 Stat. 1129), inserted section 487F above. Subsequently, section 205 of Public Law 106–505 (114 Stat. 2329), which relates to the Loan Repayment Program for Clinical Researchers, inserted a section 487F after section 487E.

[2] So in law. There are two sections 487F. Section 205 of Public Law 106–505 (114 Stat. 2329), inserted section 487F after section 487E. Previously, section 1002(b) of Public Law 106–310 (114 Stat. 1129), which relates to the Pediatric Research Loan Repayment Program, inserted section 487F after section 487E.

[3] Section 485G of the PHS Act, enacted by Public Law 106–525, was redesignated section 464z–5 by P.L. 111–148.

interest of the qualified educational loans of such professionals. In return for these loan repayments, applicants must agree to participate in qualifying research for an initial period of not less than two years (or a minimum of three years for the General Research LRP) as one of the following:

(a) An NIH employee (for Intramural LRPs), or

(b) A health professional engaged in qualifying research supported by a domestic nonprofit foundation, nonprofit professional association, or other nonprofit institution (e.g., university), or a U.S. or other government agency (Federal, State or local).

The purpose of the LRP programs is to recruit and retain highly qualified health professionals as biomedical and behavioral researchers. LRP programs offer educational loan repayment for participants who agree, by written contract, to engage in qualifying domestic nonprofit-supported research at a qualifying non-NIH institution, or as an NIH employee, for a minimum of two years (or three years for the Intramural General Research LRP).

Currently, the Clinical Research LRP for Individuals from Disadvantaged Backgrounds and the Contraception and Infertility Research LRP are governed by their own individual regulations while the other LRPs are without regulations. We propose to consolidate the regulations into a single set of regulations governing all the LRPs.

More specifically, we propose to rescind the current regulations codified at 42 CFR Part 68a, entitled, National Institutes of Health Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR–LRP), and 42 CFR Part 68c, entitled, National Institute of Child Health and Human Development Contraception and Infertility Research Loan Repayment Program, and issue a new consolidated set of regulations at 42 CFR part 68, entitled, National Institutes of Health Loan Repayment Programs (LRPs), to govern each of the eight individual NIH Loan Repayment Programs, the three that are for researchers employed by the NIH (*Intramural LRPs*) and the five that are for non-NIH scientists (*Extramural LRPs*). The three *Intramural LRPs* include the AIDS Research LRP, General Research LRP, and Clinical Research LRP for Individuals from Disadvantaged Backgrounds. The five *Extramural LRPs* include the Contraception and Infertility Research LRP, Clinical Research LRP for Individuals from Disadvantaged Backgrounds, Clinical Research LRP, Pediatric Research LRP, and Health Disparities Research LRP.

The purpose of this Notice of Proposed Rulemaking (NPRM) is to invite public comment on the proposed actions. We provide the following as public information.

Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866, Regulatory Planning and Review (September 30, 1993), Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

Executive Order 12866

Executive Order 12866, Regulatory Planning and Review, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). Based on our analysis, we believe that the proposed rulemaking does not constitute an economically significant regulatory action.

The Regulatory Flexibility Act

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. For the purpose of this analysis, small entities include small business concerns as defined by the Small Business Administration (SBA), usually businesses with fewer than 500 employees. Applicants who are eligible to apply for the loan repayment awards are individuals, not small entities. The Secretary certifies that this rule will not have a significant impact on a significant number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement that includes an assessment of anticipated costs and benefits before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal organizations, in the aggregate, or by the private sector, of "$100,000,000 or more (adjusted annually for inflation with base year of 1995) in any one year." The current inflation-adjusted threshold is approximately $145.5 million. The Secretary certifies that this rule does not mandate any spending by State, local or tribal government in the aggregate or by the private sector. Participation in the NIH loan repayment programs is voluntary and not mandated.

Executive Order 13132

Executive Order 13132, *Federalism,* requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. We reviewed the rule as required under the Order, and determined that it does not have "federalism implications" because it will not have substantial direct effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, under E.O. 13132, no further Agency action or analysis is required.

Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). More specifically, § 68.6 is a reporting requirement, but the specifics of the burden are determined in the approved application forms used by the NIH Loan Repayment Programs and have been approved under OMB No. 0925–0361, Expiration Date: June 30, 2014. Additionally, § 68.3(c), § 68.3(e), § 68.11(c), § 68.14(c), § 68.14(d), and § 68.16(a) are reporting requirements and/or recordkeeping requirements, but they are also covered under OMB No. 0925–0361.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by the proposed regulations are:

93.209—Contraception and Infertility Research Loan Repayment Program
93.220—Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds
93.232—Loan Repayment Program for General Research
93.280—NIH Loan Repayment Program for Clinical Researchers
93.285—NIH Pediatric Research Loan Repayment Program

93.307—Minority Health and Health Disparities Research
93.308—Extramural Loan Repayment for Individuals From Disadvantaged Backgrounds Conducting Clinical Research
93.936—NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program

List of Subjects in 42 CFR Part 68

Health professions, Loan repayment programs—health, Medical research.

For reasons presented in the preamble, it is proposed to amend title 42 of the Code of Federal Regulations by rescinding the current regulations at parts 68a and 68c, and adding Part 68 that encompasses all NIH Loan Repayment Programs, as set forth below.

PART 68—NATIONAL INSTITUTES OF HEALTH (NIH) LOAN REPAYMENT PROGRAMS (LRPs)

Sec.

68.1 What is the scope and purpose of the NIH LRPs?
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68.17 What other regulations and statutes apply?

Authority: 42 U.S.C. 254o, 42 U.S.C. 288–1, 42 U.S.C. 288–2, 42 U.S.C. 288–3, 42 U.S.C. 288–5, 42 U.S.C. 288–5a, 42 U.S.C. 288–6, 42 U.S.C. 285t–2.

§ 68.1 What are the scope and purpose of the NIH LRPs?

The regulations of this part apply to the award of educational loan payments authorized by sections 487A, 487B, 487C, 487E, 487F,[1] and 464z–5 of the Public Health Service Act (42 U.S.C. 288–1, 42 U.S.C. 288–2, 42 U.S.C. 288–3, 42 U.S.C. 288–5, 42 U.S.C. 288–5a, 42 U.S.C. 288–6, 42 U.S.C. 285t–2). The purpose of these programs is to address the need for biomedical and behavioral researchers by providing an economic incentive to appropriately qualified health professionals who are engaged in qualifying research supported by domestic nonprofit funding, or as employees of NIH. The NIH Loan Repayment Programs include eight separate programs, three that are *Intramural* (for NIH researchers) and five that are *Extramural* (for non-NIH researchers).

(a) The *Intramural LRPs* include:

(1) Loan Repayment Program for Research With Respect to Acquired Immune Deficiency Syndrome (or AIDS Research LRP);

(2) Loan Repayment Program for General Research (or General Research LRP), including a program for Accreditation Council for Graduate Medical Education (ACGME) Fellows; and

(3) Loan Repayment Program for Clinical Researchers from Disadvantaged Backgrounds (or Clinical Research LRP for Individuals From Disadvantaged Backgrounds). [This program is also included as a separate program under the Extramural LRPs.]

(b) The *Extramural LRPs* include:

(1) Loan Repayment Program for Contraception and Infertility Research (or Contraception and Infertility Research LRP);

(2) Loan Repayment Program for Clinical Researchers From Disadvantaged Backgrounds (or Clinical Research LRP for Individuals From Disadvantaged Backgrounds);

(3) Loan Repayment Program for Clinical Researchers (or Clinical Research LRP);

(4) Loan Repayment Program for Pediatric Research (or Pediatric Research LRP); and

(5) Loan Repayment Program for Health Disparities Research (or Health Disparities Research LRP).

§ 68.2 Definitions.

As used in this part:

Act: Means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

AIDS Research: Means research activities related to the Acquired Immunodeficiency Syndrome that qualify for inclusion in the AIDS Research LRP.

Applicant: Means an individual who applies to and meets the eligibility criteria for the NIH LRPs.

Breach of Contract: Results when a participant fails to complete the research service or other obligation(s) required under the contract and may be subject to assessment of monetary damages and penalties as defined by statute.

Clinical Research: Is patient-oriented clinical research conducted with human subjects, or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

Commercial Loans: Means loans made for educational purposes by banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies, schools, and other financial or credit institutions that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business.

Contraception Research: Is defined as research with the ultimate goal of providing new or improved methods of preventing pregnancy.

Current Payment Status: Means that a qualified educational loan is not past due in its payment schedule, as determined by the lending institution.

Debt Threshold: Means the minimum amount of qualified educational debt an individual must have, on their program eligibility date, in order to be eligible for LRP benefits, as established by the Secretary.

Director: Means the Director of the National Institute on Minority Health and Health Disparities (NIMHD) or designee.

Educational Expenses: Means the cost of the health professional's undergraduate, graduate, and health professional school's education, including the tuition expenses and other educational expenses such as living expenses, fees, books, supplies, educational equipment and materials, and laboratory expenses.

Extramural LRPs: Refers to those programs for which health professionals, who are not NIH

[1] There are two sections 487F. Section 1002(b) of Public Law 106–310 added section 487F, 42 U.S.C. 288–6, the Pediatric Research Loan Repayment Program. Subsequently, section 205 of Public Law 106–505 also added section 487F, 42 U.S.C. 288–5a, enacting the Loan Repayment Program for Clinical Researchers.

employees and have program-specified degrees and domestic nonprofit support, are eligible to apply. The Extramural LRPs include the (1) Contraception and Infertility Research LRP, (2) Clinical Research LRP for Individuals from Disadvantaged Backgrounds, (3) Clinical Research LRP, (4) Pediatric Research LRP, and (5) Health Disparities Research LRP.

General Research: Pertains to research that falls within the basic science or clinical research parameters and is not targeted toward a specific area (e.g., AIDS) or type of research (e.g., clinical research). The focus is on biomedical and behavioral research studies and investigations across a variety of scientific disciplines within the mission of NIH.

Government Loans: Means educational loans made by U.S. Federal, State, county, or city agencies that are authorized by law to make such loans.

Health Disparities Population: A population is a health disparity population if, as determined by the Director after consultation with the Director of the Agency for Healthcare Research and Quality, there is a significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population.

Individual From Disadvantaged Background:

(1) Comes from an environment that inhibited the individual from obtaining the knowledge, skill and ability required to enroll in and graduate from a health professions school; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in HHS programs. The Secretary periodically publishes these income levels in the **Federal Register**.

Infertility Research: Is defined as research with the long-range objective of evaluating, treating or ameliorating conditions that result in the failure of couples to either conceive or bear young.

Institute or Center (IC): Means an Institute or Center of the National Institutes of Health (NIH).

Intramural LRPs: Refers to those programs for which applicants must be employed by NIH. The intramural LRPs include the (1) AIDS Research LRP, (2) General Research LRP, and (3) Clinical Research LRP for Individuals from Disadvantaged Backgrounds.

Institutional Base Salary or Salary: Is the annual income or compensation that the organization pays for the applicant's appointment, whether the time is spent on research, teaching, patient care, or other activities.

Living Expenses: Means the reasonable cost of room and board, transportation and commuting costs, and other reasonable costs incurred during an individual's attendance at an educational institution and is part of the educational loan.

Loan Repayment Programs (LRPs): Refers to the NIH Loan Repayment Programs including those authorized by sections 487A, 487B, 487C, 487E, 487F, and 464z–5 of the Act, as amended.

Loan Repayment Program Contract: Refers to the agreement signed by an applicant and the Secretary or Director (for the following extramural LRPs: Health Disparities Research LRP and Clinical Research LRP for Individuals from Disadvantaged Backgrounds only). Under such an agreement, an Intramural LRP applicant agrees to conduct qualified research as an NIH employee, and an Extramural LRP applicant agrees to conduct qualified research supported by domestic nonprofit funding, in exchange for repayment of the applicant's qualified educational loan(s) for a prescribed period.

NIH: Refers to the National Institutes of Health.

Nonprofit Funding/Support: Applicants must conduct qualifying research supported by a domestic nonprofit foundation, nonprofit professional association, or other nonprofit institution (e.g., university), or a U.S. or other government agency (Federal, State or local). A domestic foundation, professional association, or institution is considered to be nonprofit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501).

Participant: Means an individual whose application to any of the NIH LRPs has been approved and whose Program contract has been executed by the Secretary or the Director.

Pediatric Research: Is defined as research directly related to diseases, disorders, and other conditions in children, including pediatric pharmacology.

Program: Refers to the NIH Loan Repayment Program, or LRP.

Program eligibility date: Means the date on which an individual's LRP contract is executed by the Secretary or the Director.

Qualified Educational Loans and Interest/Debt: (See Educational Expenses) as established by the Secretary, include Government and commercial educational loans and interest for (1) undergraduate, graduate, and health professional school tuition expenses; (2) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (3) reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses incurred.

Reasonable Educational and Living Expenses: Means those educational and living expenses that are equal to or less than the sum of the school's estimated standard student budget for educational and living expenses for the degree program and for the year(s) during which the participant was enrolled in school. If there is no standard budget available from the school, or if the participant requests repayment for educational and living expenses that exceed the standard student budget, reasonableness of educational and living expenses incurred must be substantiated by additional contemporaneous documentation, as determined by the Secretary.

Repayable debt: Means the proportion, as established by the Secretary, of an individual's total qualified educational debt that can be paid by an NIH LRP.

Salary: Has the same meaning as "institutional base salary."

School: Means undergraduate, graduate, and health professions schools that are accredited by a body or bodies recognized for accreditation purposes by the U.S. Secretary of Education.

Secretary: Means the Secretary of Health and Human Services or designee.

Service: Means the Public Health Service.

State: Means one of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Waiver: Means a waiver of the service obligation granted by the Secretary when compliance by the participant is impossible or would involve extreme hardship, or where enforcement with respect to the individual would be unconscionable. (See "*Breach of Contract.*")

Withdrawal: Means a request by a participant, prior to the Program making payments on his or her behalf, for withdrawal from Program participation. A withdrawal is without penalty to the

participant and without obligation to the Program.

§ 68.3 Who is eligible to apply?

To be eligible for consideration for the NIH LRPs, applicants must meet the following criteria:

(a) Be citizens, nationals, or permanent residents of the United States;

(b) Have the necessary degree from an accredited institution as determined by the NIH to be consistent with the needs of the LRP;

(c)(1) *For Intramural LRPs only:* Applicants must be employed by the NIH and engage in qualified full-time research as specified by the LRP and be recommended by the employing IC or have a firm commitment of employment from an authorized official of the NIH;

(2) *For Extramural LRPs only:* Applicants must be conducting qualified research for an average of at least 20 hours per week that is supported by a domestic nonprofit foundation, nonprofit professional association, or other nonprofit institution (e.g., university), or a U.S. or other government agency (Federal, State or local);

(d) Have total qualifying educational loan debt as determined on the program eligibility date;

(e) The NIH or the employing institution must provide an assurance that the applicant will be employed/appointed and provided research support for the applicable term of the LRP contract; and

(f) Recipients of LRP awards must conduct their research in accordance with applicable Federal, State, and local law (*e.g.*, applicable human subject protection regulations).

(g) *For Clinical Research for Individuals from Disadvantaged Background only:* Individual must be from a disadvantaged background. (See § 68.2, Definitions, Individual from Disadvantaged Background.)

§ 68.4 Who is eligible to participate?

To be eligible to participate in the NIH LRPs, individuals must:

(a) Meet the eligibility requirements specified in § 68.3;

(b) Not be ineligible for participation as specified in § 68.5;

(c) Engage in qualified research for the contractual period;

(d) Engage in such research for the percentage of time specified for the particular LRP; and

(e) Comply with all other terms and conditions of the applicable Loan Repayment Program.

§ 68.5 Who is ineligible to participate?

The following individuals are ineligible for NIH LRP participation:

(a) Persons who do not meet the eligibility requirements as specified under § 68.3;

(b) Any individual who has or had a Federal judgment lien against his/her property arising from Federal debt;

(c) Persons who owe an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of the service of their LRP contract. The following are examples of programs that have a service obligation:

(1) Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,

(2) Exceptional Financial Need (EFN) Scholarship Program,

(3) Financial Assistance for Disadvantaged Health Professions Students (FADHPS),

(4) Indian Health Service (IHS) Scholarship Program,

(5) National Health Service Corps (NHSC) Scholarship Program,

(6) National Research Service Award (NRSA) Program,

(7) NIH Undergraduate Scholarship Program (UGSP),

(8) Physicians Shortage Area Scholarship Program,

(9) Primary Care Loan (PCL) Program, and

(10) Public Health Service Scholarship (PHS) Program;

(d) For extramural LRPs only: Individuals who receive any research funding support or salary from a for-profit institution or organization, or Federal Government employees working more than 20 hours per week;

(e) Current recipients of NIH intramural training awards, e.g., NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

(f) Individuals conducting research for which funding is precluded by Federal law, regulation, or HHS/NIH policy or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (e.g., applicable human subject protection regulations);

(g) Individuals with only ineligible loans or loans that are not educational; and

(h) Individuals who do not have sufficient qualifying educational debt to meet the debt threshold.

§ 68.6 How do individuals apply to participate in the NIH LRPs?

An application for participation in an NIH LRP shall be submitted to the NIH, which is responsible for the Program's administration, in such form and manner as the Secretary prescribes.

§ 68.7 How are applicants selected to participate in the NIH LRPs?

The NIH LRP awards are competitive. To be selected for participation in an NIH LRP, applicants must satisfy the following requirements:

(a) Applicants must meet the eligibility requirements specified in § 68.3 and § 68.4.

(b) Applicants must not be ineligible for participation as specified in § 68.5.

(c) Upon receipt, applications for any of the NIH LRPs will be reviewed for eligibility and completeness by the NIH Division of Loan Repayment. Incomplete or ineligible applications will not be processed or reviewed further.

(d)(1) *Applications for the Intramural LRPs* that are deemed eligible and complete are submitted to the Loan Repayment Committee (LRC), which reviews, ranks, and approves/disapproves LRP awards. The LRC is composed of senior intramural scientists, including basic (bench) and clinical researchers and science policy administrators. Since LRP participation in the Intramural programs is contingent upon NIH employment, applicants must be recommended by the employing IC of the NIH to be considered by the LRC.

(2) *Applications for the Extramural LRPs* that are deemed eligible and complete will be referred by the NIH Center for Scientific Review (CSR) to an appropriate NIH IC for peer review. In evaluating the application, reviewers are directed to consider the following components and how they relate to the likelihood that the applicant will continue in a research career:

(i) Applicant's potential to pursue a career in research as defined by the appropriate LRP:

(A) Appropriateness of the applicant's previous training and experience to prepare for a research career.

(B) Appropriateness of the proposed research activities during the LRP contract to foster a career in research.

(C) Commitment to a research career, as reflected by the personal statement of long-term career goals and plan to achieve those goals.

(D) Strength of the letters of recommendations attesting to the applicant's potential for a successful career in research.

(ii) Quality of the overall environment to prepare the applicant for a research career:

(A) Quality and availability of appropriate scientific mentors and colleagues to help achieve or enhance the applicant's research independence,

including the mentors' record in mentoring researchers, funding history, and research productivity.

(B) Quality and appropriateness of institutional resources and facilities.

(iii) For the Health Disparities Research LRP, at least 50 percent of the contracts are required by statute to be for appropriately qualified health professionals who are members of a health disparity population.

§ 68.8 What do the NIH LRPs provide to participants?

(a) Loan Repayments: For each year of the applicable service period the individual agrees to serve, the NIH may pay up to $35,000 per year of a participant's repayable debt.

(b) Payments are made directly to a participant's lender(s). If there is more than one outstanding qualified educational loan, the NIH will repay the loans in the following order, unless the NIH determines significant savings would result from paying loans in a different order of priority:

(1) Loans guaranteed by the U.S. Department of Health and Human Services;

(2) Loans guaranteed by the U.S. Department of Education;

(3) Loans made or guaranteed by a State;

(4) Loans made by a school; and

(5) Loans made by other entities.

(c) Tax Liability Payments: In addition to the loan repayments, the NIH shall make tax payments in an amount equal to 39 percent of the total annual loan repayment to the Internal Revenue Service on the participant's behalf. The NIH may make additional payments to those participants who show increased Federal, State, and/or local taxes as a result of loan repayments.

(d) Under § 68.8(a), (b), and (c), the NIH will make loan and tax liability payments to the extent appropriated funds are available for these purposes.

§ 68.9 What loans qualify for repayment?

The NIH LRPs will repay participants' lenders the principal, interest, and related expenses of qualified U.S. Government and commercial educational loans obtained by participants for the following:

(a) Undergraduate, graduate, and health professional school tuition expenses;

(b) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(c) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses, as determined by the NIH.

§ 68.10 What loans are ineligible for repayment?

The following loans are ineligible for repayment under the NIH LRPs:

(a) Loans not obtained from a bank, credit union, savings and loan association, not-for-profit organization, insurance company, school, and other financial or credit institution that is subject to examination and supervision in its capacity as a lending institution by an agency of the United States or of the State in which the lender has its principal place of business;

(b) Loans for which supporting documentation is not available;

(c) Loans that have been consolidated with loans of other individuals, such as spouses or children;

(d) Loans or portions of loans obtained for educational or living expenses that exceed the standard of reasonableness as determined by the participant's standard school budget for the year in which the loan was made and are not determined by the NIH to be reasonable based on additional documentation provided by the individual;

(e) Loans, financial debts, or service obligations incurred under the following programs, or similar programs, which provide loans, scholarships, loan repayments, or other awards in exchange for a future service obligation:

(1) Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,

(2) Exceptional Financial Need (EFN) Scholarship Program,

(3) Financial Assistance for Disadvantaged Health Professions Students (FADHPS),

(4) Indian Health Service Scholarship Program,

(5) National Health Service Corps Scholarship Program,

(6) National Institutes of Health Undergraduate Scholarship Program (UGSP),

(7) National Research Service Award (NRSA) Program,

(8) Physicians Shortage Area Scholarship Program,

(9) Primary Care Loans (PCL), and

(10) Public Health Service Scholarship Program;

(f) Any loan in default, delinquent, or not in a current payment status;

(g) Any Federal educational loan debt—including debt arising from the conversion of a service obligation to a loan—that has been in default or written off as uncollectible is ineligible for repayment under the Program, even if currently considered to be in good standing;

(h) Loan amounts that participants were due to have been paid prior to the LRP contract start date;

(i) Parents PLUS loans (except the Graduate PLUS loans for students);

(j) Loans for which promissory notes have been signed after the LRP contract start date (with the exception of qualifying student loan consolidations); and

(k) Home equity loans or other noneducational loans.

§ 68.11 What does an individual have to do in return for loan repayments received under the NIH LRPs?

Individuals must agree to:

(a) Engage in qualified research for the applicable contract service period;

(b)(1) *For Intramural LRPs:* Engage in such research full-time as employees of NIH, or; (2) *For Extramural LRPs:* Engage in such research for an average of 20 hours per week supported by a domestic nonprofit foundation, nonprofit professional association, or other nonprofit institution (e.g., university), or a U.S. or other government agency (Federal, State or local);

(c) Keep all loan accounts in good standing, provide timely documentation as needed, including payment verification, service verification, change of research, change of institution, etc. Failure to provide such documentation may result in early termination, and the individual may be subject to statutory financial penalties; and

(d) Satisfy all of the other terms and conditions of the LRP and the LRP Contract (e.g., Obligations of the Participant). Failure to adhere to the terms and conditions of the LRP contract may result in early termination, and the individual may be subject to statutory financial penalties.

§ 68.12 How does an individual receive loan repayments beyond the initial applicable contract period?

An individual may apply for a competitive extension contract for at least a one-year period if the individual is engaged in qualifying research and satisfies the eligibility requirements specified under § 68.3 and § 68.4 for the extension period and has remaining repayable debt as established by the Secretary.

§ 68.13 What will happen if an individual does not comply with the terms and conditions of participation in the NIH LRPs?

Program participants who breach their Loan Repayment Program Contracts will be subject to the applicable monetary payment provisions set forth at section 338E of the Act (42 U.S.C. 254o). Payment of any amount owed under

section 338E of the Act shall be made within one year of the date the participant breached his or her Loan Repayment Program Contract, unless the NIH specifically authorizes a longer period. Terminations will not be considered a breach of contract in cases where such terminations are beyond the control of the participant as follows:

(a) Terminations for convenience of the Government will not be considered a breach of contract and monetary damages will not be assessed.

(b) Occasionally, a participant's research assignment or funding may evolve and change to the extent that the individual is no longer engaged in approved research. Similarly, the research needs and priorities of the IC and/or the NIH may change to the extent that a determination is made that a health professional's skills may be better utilized in a nonresearch assignment. Normally, job changes of this nature will not be considered a breach of contract on the part of either the NIH or the participant. Under these circumstances, the following will apply:

(1) Program participation will cease as of the date an individual is no longer engaged in approved research;

(2) Based on the approval of the NIH, the participant will be released from the remainder of his or her service obligation without assessment of damages or monetary penalties. The participant in this case will be permitted to retain all Program benefits made or owed by the NIH on his/her behalf up to the date the individual is no longer engaged in research, less the pro rata portion of any benefits advanced beyond the period of completed service.

§ 68.14 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?

(a) Any obligation of a participant for service or payment will be canceled upon the death of the participant.

(b) The NIH may waive or suspend any service or payment obligation incurred by the participant upon request whenever compliance by the participant: (1) Is impossible, (2) would involve extreme hardship to the participant, or (3) if enforcement of the service or payment obligation would be unconscionable. The NIH may approve a request for a suspension of the service or payment obligations for a period of up to one (1) year.

(c) Compliance by a participant with a service or payment obligation will be considered impossible if the NIH determines, on the basis of information and documentation as may be required, that the participant suffers from a permanent physical or mental disability resulting in the inability of the participant to perform the service or other activities that would be necessary to comply with the obligation.

(d) In determining whether to waive or suspend any or all of the service or payment obligations of a participant as imposing an undue hardship and being against good conscience, the NIH, on the basis of such information and documentation as may be required, will consider: (1) The participant's present financial resources and obligations; (2) the participant's estimated future financial resources and obligations; and (3) the extent to which the participant has problems of a personal nature, such as a physical or mental disability or terminal illness in the immediate family, which so intrude on the participant's present and future ability to perform as to raise a presumption that the individual will be unable to perform the obligation incurred.

§ 68.15 When can an NIH LRP payment obligation be discharged in bankruptcy?

Any payment obligation incurred under § 68.13 may be discharged in bankruptcy under Title 11 of the United States Code only if such discharge is granted after the expiration of the seven-year period beginning on the first date that payment is required and only if the bankruptcy court finds that a nondischarge of the obligation would be unconscionable.

§ 68.16 Additional conditions.

(a) When a shortage of funds exists, participants may be funded only partially, as determined by the NIH. However, once an NIH LRP contract has been signed by both parties, the NIH will obligate such funds as necessary to ensure that sufficient funds will be available to pay benefits for the duration of the period of obligated service unless, by mutual written agreement, the parties specify otherwise.

(b) Additional conditions may be imposed as deemed necessary.

§ 68.17 What other regulations and statutes apply?

Several other regulations and statutes apply to this part. These include, but are not necessarily limited to:

Debt Collection Act of 1982 (31 U.S.C. 3701 note);

Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 176); and Privacy Act of 1974 (5 U.S.C. 552a).

Dated: September 28, 2011.

Francis S. Collins,

Director, NIH, National Institutes of Health.

Approved: February 7, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–3900 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAR Case 2011–011; Docket 2011–0011; Sequence 1]

RIN 9000–AM13

Federal Acquisition Regulation; Unallowability of Costs Associated With Foreign Contractor Excise Tax

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the requirements of the James Zadroga 9/11 Health and Compensation Act of 2010 regarding the imposition of a 2 percent tax on certain foreign procurements.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before April 23, 2012 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2011–011 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2011–011" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2011–011." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2011–011" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), Attn: Hada Flowers, 1275 First

Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2011–011, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2011–011.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement a policy that imposes on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount of such specified Federal procurement payment. Additionally, the law stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed (26 U.S.C. 5000C Note).

The James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347) was signed into law and effective on January 2, 2011. Section 301 of the law amends the Internal Revenue Code of 1986 by adding a new Section 5000C, Imposition of tax on certain foreign procurements (26 U.S.C. 5000C). This new section imposes on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount of such specified Federal procurement payment. Additionally, the law stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed (26 U.S.C. 5000C Note).

II. Discussion and Analysis

To comply with the law, the FAR Council is proposing to amend FAR 31.205–41 to inform the Government and contractors that the costs of the 2 percent tax are not allowable, and at FAR 52.229–3, 52.229–4, 52.229–6 and 52.229–7, to provide that the costs for the 2 percent tax are not included in foreign fixed-price contracts and foreign fixed-price contracts with foreign governments. The law states that it "shall be applied in a manner consistent with international agreements." The law states that the 2 percent excise tax is applied to foreign persons that receive Federal procurement payments pursuant to a contract with the Government of the United States for the provision of goods, if such goods are manufactured or produced in a covered country, or for the provision of services if those services are provided in a covered country. "Covered country" means a country that is not a country that is party to an international procurement agreement with the United States. "Foreign person" means any person (including any individual, partnership, corporation, or other form of association) other than a United States person. The law applies to contracts entered into on or after January 2, 2011. The procedures for withholding this 2 percent tax are being handled in a separate FAR case.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

At this time an estimate of the number of small entities to which this rule will apply is not available. The 2 percent excise tax is only applied to foreign persons that receive Federal procurement payments pursuant to a contract with the Government of the United States for the provision of goods, if such goods are manufactured or produced in a covered country, or for the provision of services if those services are provided in a covered country. "Foreign person" means any person (including any individual, partnership, corporation, or other form of association) other than a United States person. "Covered country" means a country that is not a country that is party to an international procurement agreement with the United States.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2011–011) in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: February 14, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

1. The authority citation for 48 CFR parts 31 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURE

2. Amend section 31.205–41 by adding paragraph (b)(8) to read as follows:

31.205–41 Taxes.

* * * * *

(b) * * *

(8) Any tax imposed under 26 U.S.C. 5000C.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.229–3 by revising the date of the clause and paragraph (b) to read as follows:

52.229–3 Federal, State, and Local Taxes.

* * * * *

Federal, State, and Local Taxes (date)

* * * * *

(b)(1) The contract price includes all applicable Federal, State, and local

taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

* * * * *

4. Amend section 52.229–4 by revising the date of the clause and paragraph (b) to read as follows:

52.229–4 Federal, State, and Local Taxes (State and Local Adjustments).

* * * * *

Federal, State, and Local Taxes (state and local adjustments) (Date)

* * * * *

(b)(1) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

* * * * *

5. Amend section 52.229–6 by:

(a) Revising the date of the clause;

(b) Redesignating paragraph (c) as (c)(1); removing from the newly designated paragraph (c)(1) "States." and adding "States, except as provided in subparagraph (c)(2) of this clause." in its place;

(c) Adding a new paragraph (c)(2);

(d) Redesignating paragraph (d) as (d)(1); removing from the newly designated paragraph (d)(1) "The contract price shall" and adding "Except as provided in subparagraph (d)(2) of this clause, the contract price shall" in its place; and

(e) Adding a new paragraph (d)(2).

The revised and newly added text reads as follows:

52.229–6 Taxes-Foreign Fixed—Price Contracts.

* * * * *

Taxes-Foreign Fixed-Price Contracts (Date)

* * * * *

(c)(1) * * *

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

(d)(1) * * *

(2) The contract price may not be increased to offset taxes imposed under 26 U.S.C. 5000c.

* * * * *

6. Amend section 52.229–7 by:

a. Revising the date of the clause;

b. Redesignating paragraph (b) as (b)(1); and

c. Adding a new paragraph (b)(2).

The revised and newly added text reads as follows:

52.229–7 Taxes-Foreign Fixed-Price Contract With Foreign Governments.

* * * * *

Taxes-Foreign Fixed-Price Contracts With Foreign Governments (Date)

* * * * *

(b) * * *

(2) Taxes imposed under 26 U.S.C. 5000c may not be included in the contract price.

* * * * *

[FR Doc. 2012–3905 Filed 2–21–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120208116–2115–01]

RIN 0648–BB83

Fisheries of the Northeastern United States; Proposed 2012–2013 Northeast Skate Complex Fishery Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes catch limits and associated measures for the Northeast Skate Complex Fishery for the 2012–2013 fishing years, The proposed action was developed by the New England Fishery Management Council pursuant to the provisions of the Northeast Skate Complex Fishery Management Plan. The proposed catch limits are supported by the best available scientific information and reflect recent increases in skate biomass.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on March 23, 2012.

ADDRESSES: An environmental assessment (EA) was prepared that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

You may submit comments, identified by NOAA–NMFS–2012–0015, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the "Submit a Comment" icon, and then enter "NOAA–NMFS–2012–0015" in the keyword search. Locate the document you wish to comment on from the resulting list, and click on the "Submit a Comment" icon on the right of that line.
- *Fax:* (978) 281–9135, Attn: Tobey Curtis.
- *Mail:* Daniel Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Skate Specifications."

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov.* All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) is responsible for developing management measures for skate fisheries in the northeastern U.S. through the Northeast Skate Complex Fishery Management Plan (Skate FMP). Seven skate species are managed under the Skate FMP: Winter, little, thorny, barndoor, smooth, clearnose, and rosette. The Council's Scientific and Statistical Committee (SSC) reviews the best available information on the status of skate

populations and makes recommendations on acceptable biological catch (ABC) for the skate complex (all seven species). This recommendation is then used as the basis for catch limits and other management measures for the skate fisheries.

Amendment 3 to the Skate FMP was implemented in July 2010 (75 FR 34049, June 16, 2010). It instituted an annual catch limit (ACL) and accountability measures (AMs) for the skate fishery, created an annual review and specifications process, and set fishery specifications for the 2010–2011 fishing years (through April 30, 2012). The ACL was set equal to the ABC recommendation of the SSC (41,080 metric tons (mt)). Amendment 3 also implemented an annual catch target (ACT), which is 75 percent of the ACL, and annual total allowable landings (TALs) for the skate wing and bait fisheries (TAL = ACT—dead discards and state landings), three seasonal quotas for the bait fishery, and possession limits in each fishery. Skate wing possession limits were subsequently modified by Framework Adjustment 1 (76 FR 28328, May 17, 2011).

In June 2011, the SSC gave the Council a new recommendation for skate ABC to be used for the 2012–2013 fishing years (50,435 mt). The proposed specifications reflect the best available scientific information on skates. The ABC is calculated by multiplying the median catch/biomass ratio by the most recent 3-year average skate biomass from the NMFS bottom trawl survey. A calibration workshop was conducted in early 2011 to determine the best method to calibrate skate survey biomass between the new survey vessel, *Henry B. Bigelow*, and the retired vessel, *Albatross IV*. The workshop resulted in minor updates to skate overfishing definitions (described below). Significant increases in the survey biomass of little and winter skates through autumn 2010 supported increases in the ABC recommendation. Additionally, new research on the discard mortality of winter and little skates in trawl gear indicates that the assumed discard mortality rate of 50 percent is too high, and that the dead discard portion of the catch has been overestimated in the past. Updates to estimates on state waters and transfer at sea landings were also incorporated.

In light of the significant increase in ABC, the Council requested that NMFS implement the revised catch limits through a Secretarial emergency action for the remainder of the 2011 fishing year. NMFS reviewed the Council's request and published a final rule on November 28, 2011, implementing increases in ABC, ACL, ACT, and TALs (76 FR 66856, October 28, 2011). The emergency action provided an otherwise unavailable economic opportunity by allowing the fishery to harvest more skates and have a longer fishing season during the 2011 fishing year. This also helped avoid the detrimental economic impacts that would have been associated with possibly closing the skate fisheries in the absence of the emergency action. These proposed specifications are intended to replace the measures implemented by the 2011 emergency action (which expire April 30, 2012), but are similar to the emergency action measures in most cases.

Proposed Measures

Based on the June 2011ABC recommendation from the SSC, the Council proposed the following specifications for the skate fishery for the 2012–2013 fishing years:

1. That the skate ABC and ACL be specified at 50,435 mt;

2. That the ACT be specified at 37,826 mt;

3. That the TAL be specified at 23,365 mt (the skate wing fishery would be allocated 66.5 percent of the TAL (15,538 mt) and the skate bait fishery would be allocated 33.5 percent of the TAL (7,827 mt));

4. That the skate bait possession limit be increased from 20,000 lb (9,072 kg) to 25,000 lb (11,340 kg) whole weight per trip for vessels carrying a valid Skate Bait Letter of Authorization; and,

5. That the skate wing possession limits be reduced from 2,600 lb (1,179 kg) to 2,200 lb (998 kg) wing weight per trip for Season I (May 1 through August 31), and decreased from 4,100 lb (1,860 kg) to 3,600 lb (1,633 kg) wing weight per trip for Season II (September 1 through April 30).

As described in the 2011 emergency action, the Council-recommended TAL uses an inappropriately low estimate of state water landings that must be deducted from the ACT (3 percent of total landings). More recent analyses using a more accurate definition of state water landings indicate that the 2007–2009 average state water landings were approximately 6.7 percent of total landings. Therefore, this action proposes to use the same TAL specified in the emergency action (21,561 mt), rather than the slightly higher TAL proposed by the Council and described above. This would effectively keep the skate TALs and associated quotas at status quo levels through the 2013 fishing year (Table 1). This TAL is 56 percent greater than the 2010 and initial 2011 TAL (no action alternative), continuing higher allowable harvest levels for skates.

This rule proposes minor reductions to the skate wing possession limits in an effort to avoid implementation of the incidental skate wing possession limit (i.e., closure of the directed skate wing fishery) before the end of the fishing year. The possession limit analysis used by the Council was based on skate landing rates in 2010 and early 2011 when landing rates were particularly high. However, landing rates have slowed during 2011, and the wing fishery is not currently projected to harvest 100 percent of its 2011 TAL. Therefore, there may not be justification to reduce the skate wing possession limits for the 2012–2013 fishing years. This rule proposes to increase the skate bait possession limit because the bait fishery consistently under-harvested its quotas in 2010 and 2011. NMFS is requesting comment on whether or not these proposed possession limit changes should be implemented.

Based upon the results of the trawl survey vessel calibration, this rule proposes to update stock status determination criteria for skates. These updates include refinement of the survey strata used for determining the stock status of each skate species, as described in the EA for this action (see the **ADDRESSES** section of this proposed rule for how to obtain copies of the EA). The updates of stock status determination criteria also adjust the overfishing definition for clearnose skate. Overfishing would be deemed to be occurring if the 3-year moving average biomass of clearnose skate declines by 40 percent or more (compared to the current threshold of 30 percent), reflecting the higher coefficients of variation (i.e., variability in catch between individual survey tows) for this species with the new trawl survey vessel.

The specifications in this proposed rule also apply previously unaccounted for skate bait transfers at sea against the skate bait fishery quotas. Analysis indicates that bait transfers at sea, on average, represent approximately 18 percent of total skate landings, and need to be considered when monitoring catch. Finally, in order to be consistent with the requirements of Amendment 3, this rule also proposes to remove a reference to Northeast multispecies sectors in the skate wing possession limit regulations found at § 648.322 (b). The skate wing possession limits were not intended to apply to sector vessels, and this reference should have been removed from the Amendment 3 final

rule. This rule does not propose changes to any other regulations implemented by Amendment 3 or Framework Adjustment 1 (including inseason TAL triggers or incidental possession limits).

TABLE 1—NO ACTION AND PROPOSED 2012–2013 SKATE ABC AND ASSOCIATED CATCH LIMITS (MT)

	No action	Preferred	Percent difference
ABC	41,080	50,435	+23
ACL	41,080	50,435	+23
ACT	30,810	37,826	+23
TAL	13,848	21,561	+56
Wing TAL	9,209	14,338	+56
Bait TAL	4,639	7,223	+56
Assumed Discard Rate	52.0%	36.3%	−30
Assumed State Landings	3.0%	6.7%	+123

The proposed specifications are expected to maintain positive economic impacts for the fishery, such as the increases in skate revenues that resulted from implementation of the emergency rule, while also maintaining the conservation objectives of the Skate FMP. Although the landings of skate wings are expected to remain high under the proposed specifications, overall catch of skates will not likely be significantly affected due to the nature of the skate wing fishery, which is primarily an incidental fishery within the groundfish and monkfish fisheries. Under the no action alternative with lower quotas, once the possession limit trigger is reached, skates that are caught in these primary fisheries above the incidental possession limit of 500 lb (227 kg) would be discarded. This proposed rule would enable fishermen to continue to retain and land for sale those skates that would otherwise have to be discarded.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Skate FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of this action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of the complete IRFA analysis is available from the Council (see **ADDRESSES**).

The Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than $4 million in annual sales, while the size standard for charter/party operators (NAICS code 487210) is $7 million in sales. All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses. Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this rule. Information on costs in the fishery is not readily available, and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed increase in the skate ACL and TALs would impact vessels that hold Federal open access commercial skate permits that participate in the skate fishery. According to the Framework 1 final rule and Final Regulatory Flexibility Analysis (76 FR 28328, May 17, 2011), as of December 31, 2010, the maximum number of small fishing entities (as defined by the SBA) that may be affected by this action is 2,607 entities (number of skate permit holders). However, during fishing year 2010, only 601 vessels landed any amount of skate.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

The purpose of annual fishery specifications is to ensure that management measures accurately reflect the best available scientific information. The proposed action represents the maximum catch limits that could be implemented under the approved Skate FMP and regulations. Alternatives with higher catch limits, that might provide increased fishing opportunities, were not considered because such alternatives would be inconsistent with the Magnuson-Stevens Act and the Skate FMP. Any other alternatives would provide fewer fishing opportunities than the proposed action; therefore, the IRFA analyzes only the proposed action and the no action alternative.

The purpose of the proposed action is to maintain the increased skate catch and landing limits of the emergency rule, thereby providing economic benefits to the fishery by continuing to extend the duration of the fishing season. This contrasts with the negative economic impacts that would be associated with the lower catch limits and potential fishery closures that would occur under the no action alternative. The proposed action is expected to maximize the short-term profitability for the skate fishery by continuing higher levels of landings for fishing years 2012 and 2013. It is also expected to minimize potential long-term economic impacts by implementing catch levels that are sustainable and that contribute to stock rebuilding. Therefore, the economic impacts resulting from the proposed

action as compared to the no action alternative are positive.

The proposed action is almost certain to result in greater revenue from skate landings. Based on recent landing information, the skate fishery is able to land close to the full amount of skates allowable under the quotas. The estimated potential revenue from the sale of skates under the proposed catch limits is approximately $9.8 million per year, compared to $5.8 million if this action were not implemented. However, vessels that participate in the skate fishery derive most (an average of 96 percent) of their revenues from other fisheries (e.g., groundfish, monkfish). In fishing year 2010, the average total revenue (from all species combined) for the 601 vessels that landed skates was $234,389, of which an average of $17,042 was derived from skates. Therefore alterations to catch limits of other species would be expected to result in greater impacts on total fishing revenues than would alterations in skate catch limits. The proportion of revenue derived from skates may change over time, as skate prices have begun increasing in recent years, and more vessels have been deriving a greater proportion of their income from skates.

Dated: February 15, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.322, revise paragraph (b) introductory text, (b)(1) and (c)(4) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(b) *Skate wing possession and landing limits.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

(1) Up to 2,200 lb (998 kg) of skate wings (4,994 lb (2,265 kg) whole weight) per trip from May 1 through August 31, and 3,600 lb (1,633 kg) of skate wings (8,172 lb (3,707 kg) whole weight) per trip from September 1 through April 30, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27—for example, 100 lb (45.4 kg) of skate wings X 2.27 = 227 lb (103.1 kg) of whole skates).

* * * * *

(c) * * *

(4) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length.

* * * * *

[FR Doc. 2012–4111 Filed 2–21–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120207106–2105–01]

RIN 0648–BB85

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2012 Tribal Fishery for Pacific Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule for the 2012 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006. This proposed rule would establish a tribal allocation of 17.5 percent of the U.S. total allowable catch (TAC) for 2012.

The regulations proposed by this action would also establish a process for reapportionment of unused tribal allocation of Pacific whiting to the non-tribal fisheries.

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on March 23, 2012.

ADDRESSES: You may submit comments, identified by RIN 0648–BB85 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal, at *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter (RIN Number) in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.
- *Fax:* 206–526–6736, Attn: Kevin C. Duffy.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Kevin C. Duffy.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (if submitting comments via the Federal Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kevin C. Duffy (Northwest Region, NMFS), phone: 206–526–4743, fax: 206–526–6736 and email: *kevin.duffy@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action*. Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/*.

Background

The regulations at 50 CFR 660.50(d) establish the process by which the tribes with treaty fishing rights in the area

covered by the Pacific Coast Groundfish Fishery Management Plan (FMP) request new allocations or regulations specific to the tribes, in writing, during the biennial harvest specifications and management measures process. The regulations state that "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." These procedures employed by NOAA in implementing tribal treaty rights under the FMP, in place since May 31, 1996, were designed to provide a framework process by which NOAA Fisheries can accommodate tribal treaty rights by setting aside appropriate amounts of fish in conjunction with the Pacific Fishery Management Council (Council) process for determining harvest specifications and management measures. The Council's groundfish fisheries require a high degree of coordination among the tribal, state, and federal co-managers in order to rebuild overfished species and prevent overfishing, while allowing fishermen opportunities to sustainably harvest over 90 species of groundfish managed under the FMP.

Since 1996, NMFS has been allocating a portion of the U.S. TAC (called Optimum Yield (OY) or Annual Catch Limit (ACL) prior to 2012) of Pacific whiting to the tribal fishery following the process established in 50 CFR 660.50(d). The tribal allocation is subtracted from the U.S. Pacific whiting TAC before allocation to the non-tribal sectors.

To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting. The Makah Tribe has annually harvested a whiting allocation every year since 1996 using midwater trawl gear. Since 1999, the tribal allocation has been made in consideration of their participation in the fishery. In 2008 the Quileute Tribe and Quinault Indian Nation expressed an interest in commencing participation in the whiting fishery. Tribal allocations for 2009–2011 were based on discussions with all three tribes regarding their intent for those fishing years. The table below provides a history of U.S. OYs/ACLs and the annual tribal allocation in metric tons (mt).

Year	U.S. OY (mt)	Tribal allocation (mt)
2000	232,000	32,500
2001	190,400	27,500
2002	129,600	22,680
2003	148,200	25,000
2004	250,000	32,500
2005	269,069	35,000
2006	269,069	32,500
2007	242,591	35,000
2008	269,545	35,000
2009	135,939	50,000
2010	193,935	49,939
2011	290,903	66,908

Prior to publication of the regulations for the 2011–2012 harvest specification biennial cycle, all three tribes mentioned above indicated their intent to participate at some point during this biennium. The Quinault Nation indicated that they were interested in entering the fishery in 2011, and both the Quileute and Makah Tribes indicated they intended to fish in both 2011 and 2012. Only the Makah tribe participated in the fishery in 2011. Based on exchanges with the tribes during November 2011, and again in January 2012, it appears that only the Makah tribe will participate in the Pacific whiting fishery in 2012.

Since 2008, NMFS and the co-managers, including the States of Washington and Oregon, as well as the Treaty tribes, have been involved in a process designed to determine the long-term tribal allocation for Pacific whiting. At the September 2008 Council meeting, NOAA, the states and the Quinault, Quileute, and Makah tribes met and agreed on a process in which NOAA would provide to the tribes and states of Washington and Oregon a summary of the current scientific information regarding whiting, receive comment on the information and possible analyses that might be undertaken, and then prepare analyses of the information to be used by the co-managers (affected tribes, affected states, and NMFS) in developing a tribal allocation for use in 2010 and beyond. The goal was agreement among the co-managers on a long-term tribal allocation for incorporation into the Council's planning process for the 2010 season. An additional purpose was to provide the tribes the time and information to develop an inter-tribal allocation or other necessary management agreement. In 2009, NMFS shared a preliminary report summarizing scientific information available on the migration and distribution of Pacific whiting on the west coast. The co-managers met in 2009 and discussed this preliminary information.

In 2010, NMFS finalized the report summarizing scientific information available on the migration and distribution of Pacific whiting on the west coast. In addition, NMFS responded in writing to requests from the tribes for clarifications on the paper and requests for additional information. NMFS also met with each of the tribes in the fall of 2010 to discuss the report and to discuss a process for negotiation of the long-term tribal allocation of Pacific whiting.

In 2011, NMFS again met individually with the Makah, Quileute, and Quinault tribes to discuss these matters. Due to the detailed nature of the evaluation of the scientific information, and the need to negotiate a long-term tribal allocation following completion of the evaluation, the process is continuing and will not be completed prior to the 2012 Pacific whiting fishery; thus the tribal allocation of whiting for 2012 will not reflect a negotiated long-term tribal allocation. Instead, it is an interim allocation not intended to set precedent for future allocations.

Tribal Allocation for 2012

It is necessary to propose a range for the tribal allocation, rather than a specific allocation amount, because the specific allocation depends on the amount of the coastwide TAC (United States plus Canada) and corresponding U.S. TAC for 2012 (73.88% of the coastwide TAC). The Joint Management Committee (JMC), which is established pursuant to the _ Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting _ (the Agreement), is anticipated to recommend the coastwide and corresponding U.S./Canada TACs no later than March 25, 2012.

In the final Environmental Impact Statement (FEIS) addressing the groundfish fishery for the 2011 and 2012 harvest specifications and management measures, a range of 50 to 150 percent of the 2010 coastwide harvest level was analyzed.

The Council adopted a coastwide Overfishing Limit (OFL) of 973,700 mt for 2011 fisheries using the model-averaged results as recommended by the Council's Scientific and Statistical Committee (SSC). The Council recommended a coastwide harvest level of 393,751 mt for 2011 fisheries. Consistent with the terms of the Agreement, the U.S. allocation of the coastwide harvest level is 73.88 percent, which equated to 290,903 mt for 2011.

In order for the public to have an understanding of the potential tribal whiting allocation in 2012, NMFS is using the range of potential TACs analyzed in the 2011 FEIS to project a range of potential tribal allocations for 2012. Application of this range for 2011

resulted in a potential U.S. TAC of between 96,969 mt and 290,903 mt.

As described above, based on exchanges with the tribes during November 2011, and more recently in January, 2012, it appears that only the Makah tribe will participate in the Pacific whiting fishery in 2012, and they have requested 17.5% of the U.S. TAC. Application of this percentage to the range of U.S. TACs results in a tribal allocation of between 16,970 and 50,908 mt for 2012. NMFS believes that the current scientific information regarding the distribution and abundance of the coastal Pacific whiting stock suggests that 17.5 percent of the U.S. TAC is within the range of the tribal treaty right to Pacific whiting.

As described earlier, NOAA Fisheries proposes this rule as an interim allocation for the 2012 tribal Pacific whiting fishery. As with past allocations, this proposed rule is not intended to establish any precedent for future whiting seasons or for the long-term tribal allocation of whiting.

The proposed rule would be implemented under authority of Section 305(d) of the Magnuson-Stevens Act, which gives the Secretary responsibility to "carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act." With this proposed rule, NMFS, acting on behalf of the Secretary, would ensure that the FMP is implemented in a manner consistent with treaty rights of four Northwest tribes to fish in their "usual and accustomed grounds and stations" in common with non-tribal citizens. *United States* v. *Washington,* 384 F. Supp. 313 (W.D. 1974).

Reapportionment of Pacific Whiting

NMFS proposes to reinstate its regulatory authority to reapportion whiting from the tribal allocation to the non-tribal fishery when the tribes participating in the fishery will not take the entire tribal allocation during the fishing year. From 1997 through 2010, 50 CFR 660.323(c) provided authority to NMFS to undertake such reapportionment. For 2011, the regulatory provisions regarding reapportionment of tribal whiting allocation to the non-tribal fishery were eliminated when regulations implementing Amendment 21 were adopted in support of the trawl rationalization program. Revisions to the groundfish regulations at § 660.55 defined how "off the top" set-asides for all species, including the tribal allocation of Pacific whiting, would be dealt with. The new provisions did not allow flexibility to return the "off the top" set asides, including those for Pacific whiting, to other sectors of the fishery. Following implementation of the catch share program, the Council had additional discussions about reapportionment of the tribal allocation of Pacific whiting. The Council recommended that NMFS reinstate reapportionment provisions in order to promote full utilization of the Pacific whiting resource. NMFS is taking action at this time to reinstate similar reapportionment provisions, recognizing that modifications are needed to fit within the new regulatory structure implemented for the IFQ fishery.

By September 15 of the fishing year, the Regional Administrator will consider, based on discussions with tribal representatives, the tribal harvests to date and catch projections for the remainder of the year relative to the tribal allocation as specified at § 660.50 of Pacific whiting. That portion of the tribal allocation the Regional Administrator determines will not be used by the end of the fishing year may be made available for harvest by the other sectors of the trawl fishery, on September 15 or as soon as practicable thereafter. Based on the same factors described above, the Regional Administrator may reapportion whiting again at a later date to ensure full utilization of the resource. Any reapportionment of Pacific whiting from the tribal to the non-tribal sectors will be distributed in a manner consistent with the initial allocation of Pacific whiting among the non-tribal sectors, with 34 percent to the catcher-processor sector, 24 percent to the mothership sector, and 42 percent to the shorebased sector.

Current regulations at 50 CFR 660.140(d)(3)(ii)(B)(3) require that all Quota Pounds (QP) or Individual Bycatch Quota (IBQ) pounds from a Quota Share (QS) account must be transferred to one or more vessel accounts by September 1 of each year. This effectively closes QS accounts for the year.

If the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery after September 1 in any year, the following actions will be taken.

NMFS will credit QS accounts with additional Pacific whiting quota pounds proportionally, based on the whiting QS percent for a particular QS permit owner and the amount of the sector reapportionment. The QS account transfer function will be reactivated by NMFS for a period of 30 days to allow permit holders to transfer only Pacific whiting QP to vessel accounts. After 30 days, the transfer function in QS accounts will again be deactivated. If an additional reapportionment of Pacific whiting occurs, the same procedures will be followed.

Classification

NMFS has preliminarily determined that the management measures for the 2012 Pacific whiting tribal fishery are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, will take into account the data, views, and comments received during the comment period.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. The SBA has established size criteria for all different industry sectors in the US, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts less than $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is a business with annual receipts less than $7.0 million. For nonprofit organizations, the RFA defines a small organization as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or

special districts with populations of less than 50,000.

Over the past five years (2007 to 2011), the total whiting fishery (tribal and non-tribal) has averaged landings of 197,000 mt annually, worth $36 million in terms of ex-vessel revenues. As the U.S. OY/ACL has been highly variable during this time, so have landings. During this period, landings have ranged from 121,000 mt (2009) to 248,000 mt (2008). Landings for 2011 are estimated to be about 197,000 mt. Ex-vessel revenues have also varied. Annual ex-vessel revenues have ranged from $14 million (2009) to $58 million (2008). Ex-vessel revenues in 2011 were about $46 million. As landings have varied, so have prices. These prices are largely determined by the world market for groundfish as most of the whiting harvested is exported. Ex-vessel prices have ranged from $116 per mt (2009) to $236 per mt (2008). Average ex-vessel price for whiting in 2011 was $232 per mt. Note that the use of ex-vessel values does not take into account the wholesale or export value of the fishery or the costs of harvesting and processing whiting into a finished product. NMFS does not have sufficient information to make a complete assessment of these values.

The Pacific whiting fishery harvests almost exclusively Pacific whiting. While bycatch of other species occurs, the fishery is constrained by bycatch limits on key overfished species. This is a high-volume fishery with low ex-vessel prices per pound. This fishery has seasonal aspects based on the distribution of whiting off the west coast. The whiting fishery has four components. The shorebased fishery delivers their catch to processing facilities on land. Most of these vessels also deliver other groundfish species to shorebased plants. This fishery is managed under an individual fishing quota system. In the mothership sector, catcher vessels deliver to floating processors called motherships. This fishery is managed under a single mothership co-op—the Whiting Mothership Cooperative. The catcher-processor fleet consists of vessels that both catch the fish and process it aboard. This fishery is also managed under a co-op—the Pacific Whiting Conservation Cooperative.

The fourth component of the fishery is the tribal fishery. Since 1996, there has been a tribal allocation of the U.S. whiting TAC. There are three tribes associated with the whiting fishery: Makah, Quileute, and Quinault.

There are two key features of this rule making: establishing the 2012 interim tribal allocation and reinstatement of regulatory authority to reapportion whiting from the tribal to the non-tribal fishery. The alternatives are "No-Action" vs. the "Proposed Action". The proposed allocation, based on discussions with the tribes is for NMFS to allocate 17.5 percent of the U.S. total allowable catch for 2012. NMFS did not consider a broader range of alternatives to the proposed allocation. The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for whiting. Consideration of amounts lower than the tribal requests is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights, and the participating tribe has historically shown an ability to harvest the amount of whiting requested. A higher allocation would be, arguably, within the scope of the treaty right. However, a higher allocation would unnecessarily limit the non-tribal fishery. A no action alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, no action would result in no allocation of Pacific whiting to the tribal sector in 2012, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the tribes' treaty rights. Given that there is a tribal request for allocation in 2012, this alternative received no further consideration.

There are two alternatives associated with reinstating the authority to reapportion unused Pacific whiting from the tribal fishery to the non-tribal fishery. The "No-Action" alternative is the authority not reinstated. The "Proposed" Alternative would be to reinstate the authority.

NMFS has reviewed analyses of fish ticket data and limited entry permit data, available employment data provided by processors, information on Tribal fleets, and industry responses to a 2010 survey on ownership and has developed the following estimates for the whiting fishery. There are four affected components of this fishery-Shorebased whiting, mothership whiting, catcher-processor, and tribal. In the shorebased whiting fishery, quota shares of whiting were allocated to 138 entities including ten shoreside processing companies. These entities can fish the quota pounds associated with their quota shares, transfer their quota pounds to other to fish, or choose not to fish their quota pounds. Whiting is landed as bycatch in other fisheries or as a target catch in the whiting fishery. To analyze the number of participants primarily affected by this rule making, targeted whiting trips are defined as landings that contained 5,000 pounds or more of whiting. During 2011, 62 vessels landed a total of about 200 million pounds of whiting. Of these vessels, only 26 vessels had landings greater than 5,000 pounds. Thirteen of these 26 vessels are "small" entities. These 26 vessels delivered their catch to 10 processing companies. These 10 processing companies, either through ownership or affiliation, can be organized into to 6 entities. Four of these 6 entities are "small" entities. There are 37 limited entry permits that have mothership whiting catch history assignments. During 2011, these 37 permits pooled their whiting catch history assignments into a single mothership fishery co-op. Approximately half of these vessels are "small" entities. Vessels in the mothership co-op deliver their catch to mothership processors. There are 6 mothership processing companies; three or which are "small" entities. The catcher-processor fleet has ten limited entry permits and 10 vessels, owned by three companies. These three companies are considered "large" companies mainly because of their operations off Alaska. The tribal fleet is comprised of 5 vessels considered to be "small" entities, while the 3 tribal governments, based on population sizes, are considered "small" entities.

The expected effect of the "Proposed" alternative relative to the "No Action" alternative is to allow unharvested tribal allocations of whiting to be fished by the non-tribal fleets, benefitting both large and small entities. With the implementation of Amendments 20 and 21, the ability to reapportion whiting from tribal to the non-tribal fishery was eliminated for 2011. Pending markets, available bycatch, and the ability of tribal fleets to develop the capacity to harvest the tribal allocation there may be uncaught whiting in the tribal fishery because there is no regulatory mechanism to transfer uncaught whiting to the non-tribal fishery. For 2010, the tribes were initially allocated 49,939 mt. As tribal harvests were projected to be about 16,000 mt, in September 2010 and October 2010, NMFS reapportioned a total of 16,000 mt of whiting from the tribal allocation to the non-tribal shorebased, mothership, and catcher processor sectors. Unlike 2010, for 2011, NMFS was not authorized to reapportion unharvested tribal whiting to the non-tribal sectors. Tribal harvests

as of October 7, 2011 were about 19 percent of the 66,908 mt allocation indicating that about 54,000 tons of the tribal allocation would go unfished. This rulemaking would reinstate the regulatory authority to reapportion whiting from the tribal to the non-tribal fishery. If NMFS was authorized in 2011 to reapportion half or more of the 54,000 mt unfished tribal allocation, the ex-vessel revenues could have increased by as much as $6.0 million.

This proposed rule would directly regulate which entities can harvest whiting. This rule would allocate fish between tribal harvesters (harvest vessels are small entities, tribes are small jurisdictions) to non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries are a mixture of activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests are delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries.

NMFS believes this proposed rule would not adversely affect small entities and is likely to be beneficial to both small and large entities as it allows unharvested tribal fish to be harvested by non-tribal harvesters. Nonetheless, NMFS has prepared this IRFA and is requesting comments on this conclusion.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior "no jeopardy" conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated consultation on the fishery to address newly listed species including Pacific eulachon and green sturgeon, and other non-salmonid listed species (marine mammals, sea birds, and turtles). NMFS will be completing a consultation on listed marine species for the 2012 groundfish fishery by the end of January 2012, and expects that consultation on seabirds will be completed prior to late summer of 2012. Further, NMFS has concluded that take of any marine species that will be covered by the opinion to be issued in early 2012 is very unlikely to occur prior to completion of that opinion, and that take of listed seabirds is unlikely to occur in 2012. Marine Mammal Protection Act (MMPA)

Impacts resulting from fishing activities proposed in this rule are discussed in the FEIS for the 2011–12 groundfish fishery specifications and management measures. As discussed above, NMFS does not anticipate incidental take of ESA-listed marine mammals prior to the completion of the 2012 ESA consultation covering these species. NMFS expects to complete the process leading to any necessary authorization of incidental taking under MMPA section 101(a)(5)(E) concurrent with the 2012 biological opinion.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the whiting fishery regarding the issues addressed by this rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: February 16, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 is amended to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

2. In § 660.50, paragraph (f)(4) is revised to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2012 will be 17.5 percent of the U.S. TAC.

* * * * *

3. In § 660.60 paragraphs (d)(1)(iv),and (v) are revised and paragraphs(d)(1)(vi) and(d)(2) are added to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) * * *

(1) * * *

(iv) Reapportionment of the unused portion of the tribal allocation of Pacific whiting to the IFQ, mothership and catcher processor Pacific whiting fisheries.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(vi) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4) Subpart D, when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

(2) Automatic actions are effective when actual notice is sent by NMFS. Actual notice to fishers and processors

will be by email, Internet (*www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, or press release. Allocation reapportionments will be followed by publication in the **Federal Register**, in which public comment will be sought for a reasonable period of time thereafter.

4. In § 660.131 a new paragraph (h) is added to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(h) Reapportionment of Pacific Whiting.(1) By September 15 of the fishing year, the Regional Administrator will, based on discussions with representatives of the tribes participating in the Pacific whiting fishery for that fishing year, consider the tribal harvests to date and catch projections for the remainder of the year relative to the tribal allocation as specified at § 660.50 of Pacific whiting. That portion of the tribal allocation that the Regional Administrator determines will not be used by the end of the fishing year may be reapportioned to the other sectors of the trawl fishery in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. Subsequent reapportionments may be made based on subsequent determinations by the Regional Administrator based on the factors described above in order to ensure full utilization of the resource.

(2) The reapportionment of surplus whiting will be made effective immediately by actual notice under the automatic action authority provided at 660.60 (d)(1).

(3) Estimates of the portion of the tribal allocation that will not be used by the end of the fishing year will be based on the best information available to the Regional Administrator.

5. In § 660.140 paragraph (d)(1)(ii) and (d)(3)(ii)(B)(*3*) are revised to read as follows:

§ 660.140 Shorebased IFQ program.

* * * * *

(d) * * *

(1) * * *

(ii) Annual QP and IBQ pound allocations. QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (*i.e.* , decimal amounts less than 0.5 round down and 0.5 and greater round up), except that in the first year of the Shorebased IFQ Program, issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound. Rounding rules may affect distribution of the entire shorebased trawl allocation. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (*i.e.* , no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year in order to be fished, unless there is a reapportionment of Pacific whiting consistent with §§ 660.131(h) and 660.140(d)(3).

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(*3*) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account to a vessel account are subject to vessel accumulation limits and NMFS' approval. Once QP or IBQ pounds are transferred from a QS account to a vessel account (accepted by the transferee/vessel owner), they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by September 1 each year. If the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery after September 1 in any year, the following actions will be taken.

(*i*) NMFS will credit QS accounts with additional Pacific whiting QP proportionally, based on the whiting QS percent for a particular QS permit owner and the amount of the sector reapportionment of whiting.

(*ii*) The QS account transfer function will be reactivated by NMFS for a period of 30 days from the date that QS accounts are credited with additional Pacific whiting QP to allow permit holders to transfer only Pacific whiting QP to vessel accounts.

(*iii*) After 30 days, the transfer function in QS accounts will again be inactivated.

* * * * *

[FR Doc. 2012–4113 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 35
Wednesday, February 22, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0103]

Dow AgroScience LLC; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status of Corn Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: We are extending the comment period for a petition received from Dow AgroScience LLC seeking a determination of nonregulated status of corn designated as DAS–40278–9, which has been genetically engineered for increased resistance to broadleaf herbicides in the phenoxy auxin group (such as the herbicide 2,4-D) and resistance to grass herbicides in the aryloxyphenoxypropionate acetyl coenzyme A carboxylase inhibitor group (such as quizalofop herbicides). This action will allow interested persons additional time to prepare and submit comments on the petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before April 27, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0103-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0103, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0103* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

The petition, draft environmental assessment, and plant pest risk assessment are also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/09_23301p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/09_23301p_dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/09_23301p_dpra.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3910, email: *evan.a.chestnut@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: On December 27, 2011, we published in the **Federal Register** (76 FR 80872–80873, Docket No. APHIS–2010–0103) a notice [1] advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Dow AgroScience LLC seeking a determination of nonregulated status of corn (*Zea mays*) designated as event DAS–40278–9, which has been genetically engineered for increased resistance to broadleaf herbicides in the phenoxy auxin group (such as the herbicide 2,4-D) and resistance to grass herbicides in the aryloxyphenoxypropionate acetyl coenzyme A carboxylase inhibitor group (such as quizalofop herbicides).

Comments on the Dow petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status were required to be received on or before February 27, 2012. We are extending the comment period on Docket No. APHIS–2010–0103 for an additional 60 days, ending April 27, 2012. This action will allow interested persons additional time to prepare and submit comments on the Dow petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–4081 Filed 2–21–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, supporting documents, and any comments we have received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0103.*

DEPARTMENT OF AGRICULTURE

Forest Service

San Bernardino National Forest, Mountaintop Ranger District, California, Mitsubishi South Quarry Expansion Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Mitsubishi Cement Corporation is submitting to the San Bernardino National Forest and San Bernardino County, for permitting, a Plan of Operations and Reclamation Plan for the South Quarry. The South Quarry will total approximately 153.6 acres consisting of a 128-acre quarry, a 2.7 acre landscape berm, a 22.2-acre haul road 1.8 miles in length, and a temporary construction road of 0.7 acres. The South Quarry and haul road will be located almost entirely (147.0 acres) on 440 acres of unpatented claims owned by Mitsubishi Cement Corporation on the San Bernardino National Forest with approximately 6.6 acres of the haul road located on Mitsubishi Cement Corporation fee land where it enters the existing East Pit.

Current estimates project the South Quarry could feed the cement plant for approximately 120 years. No change to the throughput or operation of the Cushenbury Cement Plant is proposed as part of this project. Based on drilling conducted during the winter of 2009 and 2010, the South Quarry site has estimated proven and inferred reserves of over 200 million tons of mostly high to medium grade limestone. This higher grade limestone would be blended with lower grade limestone excavated from the West and East Pits at a ratio of approximately 50/50 in order to meet the limestone specifications to feed the adjacent Mitsubishi Cement Corporation Cushenbury Cement Plant. Concurrent reclamation would be conducted throughout the life of the quarry and, at the conclusion of excavations, 5 years of active reclamation and revegetation would be implemented followed by revegetation monitoring and remediation until revegetation goals are achieved.

Comments are being requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues (including alternatives) that need to be analyzed and to eliminate from detailed study those issues that are not significant. Supporting documentation should be included with comments recommending that the joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) (EIS/EIR), to be prepared by the San Bernardino National Forest and County of San Bernardino, as the lead state agency under the California Environmental Quality Act (CEQA), address specific environmental issues.

DATES: Comments concerning the scope of the analysis must be received by March 23, 2012. The draft EIS/EIR is expected fall 2012 and the final EIS/EIR is expected spring 2013.

ADDRESSES: Send written comments to San Bernardino National Forest, Mitsubishi South Quarry Expansion Project, do Anne Surdzial, ECORP Consulting, Inc. 215 N. 5th Street, Redlands, CA 92374. Comments may also be sent via email to *asurdzial@ecorpconsulting.com* (please put "Mitsubishi Cement Company South Quarry Expansion" in the subject line), or via facsimile to (909) 307–0056. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS/EIR. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions with the proposed action.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. However, comments submitted anonymously will be accepted and considered.

FOR FURTHER INFORMATION CONTACT: Thomas Hall, Environmental Coordinator, San Bernardino National Forest at (909) 382–2905 or *thall@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Mitsubishi Cement Corporation submitted the Plan of Operations and Reclamation Plan for the proposed South Quarry to the Mountaintop District Ranger, San Bernardino National Forest, on October 22, 2010. The South Quarry is within portions of Sections 14, 15, 22, and 23 Township 3 North, Range 1 East. Elevations at the South Quarry site currently range from 5,555 to 6,675 feet.

The South Quarry would be mined at an average production rate of 1.3 million tons per year of ore and 150,000 tons per year of waste rock for up to 120 years. At this time, Mitsubishi Cement Corporation is requesting a 120-year operations plan excavating approximately 156 million tons of ore. Mitsubishi Cement Corporation's Cushenbury Cement Plant requires a limestone feed of up approximately 2.6 million tons per year, and this would not change as a result of the South Quarry Project. East and West Pits would be reduced to an average of 1.3 million tons per year of ore and 150,000 tons per year of waste rock. Therefore the overall limestone production of 2.6 million tons per year and 300,000 tons per year of waste rock at the mining complex would not change.

Purpose and Need for Action

Mitsubishi Cement Corporation submitted to San Bernardino National Forest and San Bernardino County a Plan of Operations and Reclamation Plan for the proposed South Quarry. The Forest Service is analyzing the surface use of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21–54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. The responsibility for managing mineral resources is in the Secretary of the Interior.

Mitsubishi Cement Corporation's Cushenbury Cement Plant requires a limestone feed of approximately 2.6 million tons per year of a specific blend of limestone in order to manufacture cement. In 2004, as the existing East Pit neared its exhaustion of cement grade limestone, the West Pit expansion was approved by the County of San Bernardino on 191 acres to the west of the existing East Pit with approximately 217 million tons of limestone reserves. The amount of high grade limestone to blend with the lower grades of limestone to meet the feed requirement for the cement plant would not be adequate for the life of the mine. The proposed South Quarry site would be able to meet the requirements for blending with its estimated, proven and inferred reserves of over 200 million tons of high to medium grade limestone rock.

Proposed Action

The development of the South Quarry would consist of construction of the 1.8 mile long haul road, four phases of excavations, concurrent reclamation, and then final reclamation followed by revegetation monitoring. During the first two years, the 1.8-mile long haul road would be constructed. The planned haul road would access the South Quarry at 5,950 feet amsl and traverse down the north slope to an elevation of 5,050 feet amsl at the southwest corner of the existing East Pit. The road's surface width would be 50 to 60 feet with a grade not to exceed 10% and it would have a surface of crushed limestone. The excavation plan for the South Quarry is divided into four phases based on operational, engineering, and environmental concerns with the development of the main quarry to a maximum depth of 5,365 feet above mean sea level or 1,215 feet below the quarry rim on the south. Phase 1A would be initiated after construction of the haul road and compliance with preconstruction conditions and has ore reserves of approximately 3.5 years. Phase 1B would excavate the southeast 31 acres of the quarry. Reserves are estimated at about 29 million tons of ore. At an ore production rate of 1.3 million tons per year, Phase 1B would have a life of approximately 22 years. Phase 2 would excavate the central 85 acres of the quarry. Reserves are estimated at 19 million tons of ore. At an ore production rate 1.3 million tons per year, Phase 1B would have a life of approximately 14.5 years for a cumulative total of 40 years from the

commencement of mining. Phase 3 would be an approximately 40-year excavation phase on approximately 75 acres within the central part of the quarry within the footprint of Phase 2. Mining would excavate to floor elevation of approximately 5,905 feet, a depth of approximately 315 feet below the Phase 2 floor elevation of 6,130 feet. Reserves are estimated at over 52 million tons of ore. Phase 4 would be the final excavation phase on approximately 65 acres within the central part of the proposed South Quarry configuration, again within the footprint of Phase 2, to complete the 120-year lifespan. Mining would excavate to floor elevation of approximately 5,365 feet, a maximum depth of approximately 550 feet below the Phase 3 floor elevation of 5,905 feet. Reserves are estimated at 52 million tons of ore.

Minimal amounts of overburden are expected as the limestone is generally exposed across the quarry site. Any topsoil onsite would be in the form of smaller eroded limestone gravel that may contain organic material and seeds. This surface material would be salvaged and stored in separately marked stockpiles for future reclamation efforts along and above the top benches and used for the construction of the landscape berm along the southern rim. Instead of removing the waste rock and depositing it in a separate waste stockpile(s) outside the rim of the quarry, this plan proposes to backfill the waste rock within Phases 1B and 4 as mining progresses with depth.

Mitsubishi Cement Corporation proposes to reclaim the quarry site to meet both Forest Service Minerals Regulations (36 CFR 228, Subpart A) under the jurisdiction of the San Bernardino National Forest and the California Surface Mining and Reclamation Act implemented by San Bernardino County that will minimize impacts to the surrounding environment. Due to planned extraction, the permanent perimeter quarry slopes would be reclaimed from the rim downward as completed per phase to meet designed slopes dependent on the findings of the ongoing slope stability assessments. Reclamation would consist of sloping excavated cuts and benches as necessary to meet the designed 0.55H: 1V overall slope and to round the rims of the final benches. Each bench would be sloped inward toward the vertical wall to capture any precipitation or runoff. The individual benches would be approximately 45 feet vertical and 25 feet wide unless required to be flatter in specific areas, as determined by geological mapping during ongoing quarry operations or where the waste rock stockpiles would be located. Surface material salvaged for revegetation would be limited due to the surficial rock conditions onsite. Available material containing the native seed bank would be placed on the benches and would be augmented with additional growth media and mulch in "islands" to provide future sources of seeds. The revegetation methods include seeding with native perennial species, plantings grown in a nursery whether started from seed, cuttings or whole plant salvage from seeds collected at or near the site, and planting plants salvaged from new mining areas. The Biological Monitoring Plan would be an ongoing effort to assess the results of revegetation on the disturbed areas of the site. The monitoring plan would be followed annually to monitor and assess completed revegetated areas and areas where revegetation is being planned or just beginning.

The Plan of Operations includes avoidance/minimization and environmental protection measures, including:

1. Mitsubishi Cement Corporation will, upon withdrawal, quit-claim specified unpatented mining claims held within San Bernardino National Forest, and convey specified patented lands, which have been verified by the Forest Service to contain occupied endangered species habitat on a 3 to 1 ratio (acres and conservation value) as mitigation for impacts of the expansion on Cushenbury buckwheat (*Eriogonum ovalifolium* var. vineum), Cushenbury oxytheca (*Oxytheca parishii* var. goodmaniana), and Parish's daisy (*Erigeron parishii*).

2. Control of surface drainage, erosion, and sedimentation of the proposed haul road and quarry operations will involve the following primary components currently being implemented for existing operations:

a. Limiting surface disturbance to the minimum area required for active operations.

b. Diverting runoff, where operationally feasible, such that runoff from undisturbed areas does not enter the area of active operations.

c. Using ditches, sediment basins, and localized control and maintenance measures to intercept and control runoff along the haul road.

d. Stabilizing disturbance areas through regrading, revegetation, and other restoration practices.

3. To avoid incidental killing of birds protected under the Migratory Bird Treaty Act, two measures will be implemented: (1) Complete all vegetation removal or initial grading outside the breeding season (i.e., do not remove potential nesting habitat from February 1 through August 31), or (2) confirm prior to beginning vegetation removal but after survey flagging is in place showing the limits of grading, that no birds are nesting in areas to be disturbed.

4. The occurrence of weeds on-site shall be monitored by visual inspection. The goal is to prevent weeds from becoming established and depositing seeds in areas to be revegetated at a later date. No areas will be allowed to have more than 20 percent of the ground cover provided by nonnative plant species. If inspections reveal that weeds are becoming an issue or have established on-site, then removal will be initiated. Inspections shall be made in conjunction with revegetation monitoring.

Lead and Cooperating Agencies

The San Bernardino National Forest and County of San Bernardino, as the lead state agency under the California Environmental Quality Act (CEQA), will be preparing a joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR). This EIS/EIR will analyze and disclose the potential effects of the proposed limestone quarry. Each joint lead agency retains its decisionmaking authority over the part of the proposed action over which it has authority and does not acquire any influence over the other's decisionmaking.

The Mojave Desert Air Quality Management District has agreed to participate as a cooperating agency and to provide expertise regarding the proposed actions' relationship to the relevant objectives of regional, State and local land use plans, policies and controls.

Responsible Official

The Responsible Official for the Mitsubishi South Quarry Expansion project is the San Bernardino National Forest Supervisor, Jody Noiron.

Nature of Decision To Be Made

The Responsible Official will decide whether to approve the Plan of Operation following the environmental analysis. The Forest Service does not have the authority to remove the proponent's ability to mine its claims on National Forest System lands. San Bernardino County will decide whether to approve the Reclamation Plan under SMARA following the analysis under CEQA.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS/EIR. The complete Plan of Operation and Reclamation Plan is available on the San Bernardino National Forest Web site at: *http://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=32613.* Public Scoping meetings will be held on Tuesday, March 13, 2012 at the Lucerne Valley Community Center, 33187 Old Woman Springs Road, Lucerne Valley, California 92356 beginning at 7 pm PST, and Tuesday, March 20, 2012 at the Big Bear Discovery Center, 40971 North Shore Drive (Highway 38), Fawnskin, California 92333 beginning at 7 pm PST.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS/EIR. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: February 13, 2012.

Jody Noiron,

Forest Supervisor, San Bernardino National Forest.

[FR Doc. 2012–3938 Filed 2–21–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc., Notice of Intent To Hold Public Scoping Meetings and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent To Hold Public Scoping Meetings and Prepare an Environmental Assessment.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture, intends to hold public scoping meetings and prepare an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA) and RUS's Environmental Policies and Procedures (7 CFR part 1794) in connection with potential impacts related to a proposed project in Colorado by Tri-State Generation and Transmission Association, Inc. (Tri-State). The proposed Burlington-Wray 230-kilovolt (kV) Transmission Project (Proposal) consists of the following: a proposed new single-circuit 230-kV electric transmission line between the existing Burlington Substation in Kit Carson County and the existing Wray Substation in Yuma County. Tri-State is requesting that RUS provide financial assistance for the Proposal.

DATES: RUS will conduct public scoping meetings in an open house format to provide information and solicit comments for the preparation of the EA. The scoping meetings will be held on the following dates: Tuesday, March 6, 2012, from 5–8 p.m. at the Burlington Community Center, 340 South 14th Street, Burlington, Colorado 80807; Wednesday, March 8, 2012, 5–8 p.m. at the Wray Roundhouse, 245 West 4th Street, Wray, Colorado 80758. All written questions and comments must be received on or before March 23, 2012.

ADDRESSES: An Alternative Evaluation Study (AES) and Macro Corridor Study (MCS) have been prepared for the proposed project. All documents are available for review prior to and at the public scoping meetings. The reports are available at the RUS address provided in this notice and on the agency's Web site: *http://www.rurdev.usda.gov/UWP-ea.htm.* The documents are also available for review at the offices of Tri-State and its member cooperatives K.C. Electric Association and Y–W Electric Association. In addition, the following repositories will have the AES and MCS available for public review:

Tri-State Generation and Transmission Association, Inc., 1100 West 116th Avenue, Westminster, Colorado 80234–2814.

K.C. Electric Association, 281 Main Street, Stratton, Colorado 80836.

Y–W Electric Association, 1016 Grants Way, Wray, Colorado 80758–1915.

Wray Public Library, 301 W. 7th Street, Wray, Colorado 80758.

Burlington Public Library, 321 14th Street, Burlington, CO 80807.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the EA, to comment on the EA, or for further information, contact Dennis Rankin, Environmental Protection Specialist, USDA Rural Utilities Service, 1400 Independence Avenue SW., Stop 1571, Washington, DC 20250–1571, Telephone: (202) 720–1953, Facsimile: (202) 690–0649, or email *dennis.rankin@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The primary purpose for the Proposal is to alleviate transmission system limitations in eastern Colorado, improve Tri-State's ability to dispatch existing generation resources in eastern Colorado, and improve Tri-State's ability to deliver energy to native load customers. The proposed action also would provide a transmission outlet for renewable energy generation in eastern Colorado.

Tri-State is seeking funding from RUS for the Proposal. Prior to making a financial decision about whether to provide financial assistance for a proposed project, RUS is required to conduct an environmental review under the NEPA in accordance with the RUS Environmental Policies and Procedures codified in 7 CFR part 1794. Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed action. Representatives from the RUS and Tri-State will be available at the scoping meetings to discuss the environmental review process, describe the Proposal, discuss the scope of environmental issues to be considered, answer questions, and accept comments. RUS and Tri-state will use comments and input provided by all interested parties in the preparation of an Environmental Assessment Tri-State will submit the EA to RUS for review. RUS will use the environmental document to determine the significance of the impacts of the Proposal and may adopt the environmental document as its EA for the proposal. RUS's EA will be available for review and comment for 30 days. Announcement of the availability of the EA will be published in the **Federal Register** and in newspapers with circulation in the project area.

Should RUS determine that the preparation of an Environmental Impact Statement is not necessary, it will prepare a Finding of No Significant Impact (FONSI). Announcement of the availability of a FONSI will be published in the **Federal Register** and in newspapers with circulation in the project area. Any final action by RUS related to the Proposal will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations and completion of the environmental review procedures as prescribed by RUS's Environmental Policies and Procedures (7 CFR part 1794).

Dated: February 15, 2012.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA, Rural Utilities Service.

[FR Doc. 2012–4082 Filed 2–21–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Second Extension of Time Limit for the Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Raquel Silva, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–6475.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2010, the Department of Commerce ("Department") initiated the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires ("off-the-road tires") from the People's Republic of China ("PRC") for the period, September 1, 2009, through August 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 75 FR 66349 (October 28, 2010). On October 7, 2011, the Department published its preliminary results of the administrative review of the antidumping order on off-the-road tires from the PRC. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of the 2009—2010 Antidumping Duty Administrative Review and Intent to Rescind, in Part*, 76 FR 62356, (October 7, 2011). On February 8, 2012, the Department extended the time limit for the final results by 14 days to February 18, 2012. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order*, 77 FR 6536 (February 8, 2012).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the final results in an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days.

We determine that it is not practicable to complete the final results of this review within the current deadline because the Department continues to require additional time to analyze issues raised in recent surrogate value submissions, case briefs, and rebuttals. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time limit for completion of the final results of this administrative review by 14 additional days, until March 3, 2012. However, because March 3, 2012, falls on a weekend, the final results are now due no later than March 5, 2012. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: February 15, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–4125 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Joy Zhang AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2011, the Department of Commerce (the "Department") published a notice of opportunity to request an administrative review of the antidumping duty order on seamless refined copper pipe and tube from Mexico.[1] Pursuant to requests from interested parties,[2] the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period November 22, 2010, through October 31, 2011: GD Affiliates S. de R.L. de C.V. ("GD Affiliates"), Hong Kong GD Trading Co., Ltd., Nacional de Cobre, S.A. de C.V. ("Nacobre"), and IUSA, S.A. de C.V. ("IUSA").[3] On February 6, 2012, the Department received a letter from Petitioners withdrawing their November 28, 2011, request for a review of Nacobre, IUSA, and Hong Kong GD Trading Co., Ltd.

Partial Rescission of the First Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. This review was initiated on December 30, 2011. *See Initiation Notice*. Petitioners withdrew their request for a review of Nacobre, IUSA and Hong Kong GD Trading Co., Ltd. on February 6, 2012, which is within the 90-day deadline. While no other party requested an administrative review of IUSA, we received other requests for review of Nacobre and Hong Kong GD Trading Co., Ltd. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review only with respect to IUSA.[4] The review will continue with respect to Nacobre, GD Affiliates, and Hong Kong GD Trading Co., Ltd.

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 67413 (November 1, 2011).

[2] Cerro Flow Products, LLC, Wieland Copper Products, LLC, Muller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners"); GD Affiliates S. de R.L. de C.V., GD Affiliates Servicios S. de C.V., GD Copper Cooperatief U.A., Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., Golden Dragon Holding (Hong Kong) International, Ltd., and DC Copper (U.S.A.); and Nacional de Cobre, S.A. de C.V.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in part*, 76 FR 82268 (December 30, 2011) ("*Initiation Notice*").

[4] *See, e.g., Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 21781 (May 11, 2009); *see also Carbon Steel Butt-Weld Pipe Fittings from Thailand: Rescission of Antidumping Duty Administrative Review*, 74 FR 7218 (February 13, 2009).

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For IUSA, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period November 22, 2010, through October 31, 2011, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent increase in the amount of antidumping duties assessed.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 15, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–4123 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2011, the Department of Commerce ("the Department") initiated the third sunset review of the antidumping duty order on silicon metal from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). Based on the notice of intent to participate and adequate substantive response filed by the domestic interested party, and the lack of response from any respondent interested party, the Department conducted an expedited (120-day) sunset review of the antidumping duty order on silicon metal from the PRC, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the "Final Results of Sunset Review" section of this notice, *infra*.

DATES: *Effective Date:* February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0989 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION: On June 10, 1991, the Department published the antidumping duty order on silicon metal from the PRC.[1] On November 1, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty order on silicon metal from the PRC, pursuant to section 751(c) of the Act.[2] On November 16, 2011, pursuant to 19 CFR 351.218(d)(1), the Department received a timely and complete notice of intent to participate in the sunset review from Globe Metallurgical, Inc., a domestic producer of silicon metal ("Globe"). On December 1, 2011, pursuant to 19 CFR 351.218(d)(3), Globe filed a timely and adequate substantive response. The Department did not receive substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on silicon metal from the PRC.

Scope of the Order

Imports covered by this review are shipments of silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Also covered by this review is silicon metal from the PRC containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule ("HTS") as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this review. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. *See* "Issues and Decision Memorandum for the Expedited Third Sunset Review of the Antidumping Duty Order on Silicon Metal from the People's Republic of China," from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice ("I&D Memorandum"). The issues discussed in the I&D Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order is revoked. The I&D Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). Access to IA ACCESS is

[1] *See Antidumping Duty Order: Silicon Metal From the People's Republic of China*, 56 FR 26649 (June 10, 1991).

[2] *See Initiation of Five-Year ("Sunset") Review*, 76 FR 67412 (November 1, 2011).

available in the Central Records Unit ("CRU"), room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed I&D Memorandum and the electronic versions of the I&D Memorandum are identical in content.

Final Results of Sunset Review

The Department determines that revocation of the antidumping duty order on silicon metal from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Exporters	Weighted-Average margin (percent)
PRC-Wide Rate	139.49

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: February 15, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–4127 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Commerce.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, Jun Jack Zhao, or Emily Halle, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586, (202) 482–1396 or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 2011, based on a timely request from the petitioner, SolarWorld Industries America, Inc. (Petitioner), the Department of Commerce (the Department) extended the due date for the preliminary determination in the countervailing duty investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China, to no later than February 13, 2012.[1] Petitioner made a second timely request on January 19, 2012, to further postpone the preliminary countervailing duty determination by 18 days, to March 2, 2012, which the Department granted.[2]

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the Department concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated, section 703(c)(1)(B) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

The Department has determined that the parties involved in this proceeding are cooperating, and that the investigation is extraordinarily complicated.[3] The mandatory respondents recently filed extensive questionnaire responses and also identified and included responses to the questionnaire for multiple cross-owned affiliated companies, which now are included in the investigation.[4] Specifically, the Department is investigating 27 alleged subsidy programs including, but not limited to, loans, grants, income tax incentives, and the provision of goods and services for less than adequate remuneration. Due to the number of companies and the complexity of the alleged countervailable subsidy practices being investigated, we determine that this investigation is extraordinarily complicated. Therefore, in accordance with section 703(c)(1)(B) of the Act, we are fully extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated. However, as that date falls on a Saturday (*i.e.*, March 17, 2012), the deadline for completion of the preliminary determination is now Monday, March 19, 2012, the next business day.[5]

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 15, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–4119 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 76 FR 81914 (December 29, 2011).

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Second Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 77 FR 4764 (January 31, 2012).

[3] *See* section 703(c)(1)(B) of the Act.

[4] *See* letter from Changzhou Trina Solar Energy Co., Ltd., regarding, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; CVD Questionnaire Response of Changzhou Trina Solar Energy Co., Ltd.," dated January 31, 2012. *See also* letter from Wuxi Suntech Power Co. Ltd., regarding, "Crystalline Silicon Photovoltaic ("CSPV") Cells from the People's Republic of China: Countervailing Duty Questionnaire Response of Wuxi Suntech Power Co., Ltd.," dated January 31, 2012.

[5] *See Notice of Clarification: Applicotion of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period October 1, 2011, through December 31, 2011.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: February 15, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] Subsidy ($/lb)	Net [2] Subsidy ($/lb)
27 European Union Member States [3]	European Union Restitution Payments	$0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.34	0.34
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	$ 0.00	$ 0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2012–4122 Filed 2–21–12; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904; NAFTA Panel Reviews; First Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On February 10, 2012, Maquilacero S.A. de C.V. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel Review was requested of the U.S. Department of Commerce's final determination regarding Light-Walled Rectangular Pipe and Tube from Mexico, Final Results of 2009–2010 Antidumping Duty Administrative Review. This determination was published in the **Federal Register** (77 FR 1915), on January 12, 2012. The NAFTA Secretariat has assigned Case Number USA–MEX–2012–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement ("Agreement") established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on March 18, 2011, requesting a panel review of the determination and order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 12, 2012);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first

Request for Panel Review (the deadline for filing a Notice of Appearance is March 26, 2012); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in panel review and the procedural and substantive defenses raised in the panel review.

Dated: February 14, 2012.

Ellen Bohon,

United States Secretary, NAFTA Secretariat

[FR Doc. 2012–3854 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Survey of Hawaii Resident Resource Users' Knowledge, Attitudes and Perceptions of Coral Reefs in Two Hawaii Priority Sites

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 23, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Risa Oram, (808) 944–2124 or *Risa.Oram@noaa.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States (U.S.) Coral Reef Task Force (USCRTF) was established in 1998 by *Executive Order 13089* to lead and coordinate U.S. efforts to address the threats facing coral reefs. The Hawaii Coral Reef Working Group (CRWG), composed of key state and federal partners involved in coral reef management, was established through a local charter to provide guidance to the State of Hawaii's coral program and to prioritize sites to implement specific ridge-to-reef management activities. Priority sites are areas where coral reef ecosystems of high biological value are threatened but have strong potential for improvement with management intervention. The current two priority sites in Hawaii are South Kohala on the Big Island (Pelekane Bay-Puako-Anaeho'omalu Bay, Hawai'i) and West Maui (Ka'anapali-Kahekili, Maui). At both sites, multiple partners are collaborating to produce conservation action plans to conserve resources and human uses.

The Human Dimensions Research Program at NOAA Fisheries Pacific Islands Fisheries Science Center is initiating a survey to support development of these conservation action plans, including management actions in watersheds and in the coral reef ecosystems in the two priority sites. The purpose of this survey is to identify resident users' knowledge, attitudes, and perceptions regarding coral reef and watershed conditions and alternative management strategies to protect resources at the two priority sites.

Information from this survey is needed to inform the conservation action planning process initiated by the State of Hawaii Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (HDAR) and The Nature Conservancy (TNC) at the South Kohala site and to inform conservation and watershed planning being implemented by HDAR, The U.S. Army Corps of Engineers, and other partners at the West Maui site. Managers have indicated a more immediate need for information at the South Kohala site; therefore, we will conduct the survey there first and the survey at West Maui afterwards. The information gained from the survey will provide priority site managers with essential information about the population of resident users who can both threaten reef health and play a key role in stewardship of reef resources. Conservation planners will gain information about the threats and status of coral reefs from the resident users who interact most with those systems, and help managers identify topics for public outreach and education. A representative study of resident users' knowledge, attitudes, and perceptions will supplement broader public input into the conservation planning processes at the sites.

II. Method of Collection

Data will be collected through an intercept survey of adult residents visiting the coastal area included within the boundary of the two priority sites. Sampling will be stratified by season (wet/dry); day of the week (weekend-holiday/weekday) and time of day (morning/afternoon/evening) to account for the expected variation in use levels by residents. The target sample size is 200 respondents at each site. The only wording that would change on the surveys would be interviewer introductions to the survey and specifics about the priority site boundaries.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 133.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 15, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–3992 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA985

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued one-year Letters of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: These authorizations are effective from February 27, 2012 through February 26, 2013.

ADDRESSES: The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34875), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*). NMFS received requests for LOAs from Energy Resource Technology GOM, Inc. (ERT) and Demex International, Inc. (Demex) for activities covered by EROS regulations.

Reporting

NMFS Galveston Laboratory's Platform Removal Observer Program (PROP) has provided reports for ERT removal of offshore structures during 2011. Demex has not used their LOA for any operations to date. NMFS PROP observers and non-NMFS observers reported the following during ERT's EROS operations in 2011:

Company	Structure	Dates	Marine mammals sighted (individuals)	Biological impacts observed to marine mammals
ERT	Vermillion Area, Block 100, Platform C.	April 10 to 20, 2011	Spotted dolphins (14)	None.
ERT	Matagorda Island Area, Block 604, Platforms #1 and #14.	May 3 to 7, 2011	Bottlenose dolphins (15), Spotted dolphins (23), and Unidentified dolphins (1).	None.
ERT	Matagorda Island Area, Block 604, Well #3.	May 4 to 7, 2011	Bottlenose dolphins (25)	None.
ERT	Brazos Area, Block 436, Platform B	May 16 to 31, 2011	Bottlenose dolphins (97) and Spotted dolphins (5).	None.
ERT	Vermilion Area, Block 83, Platform A	May 30 to June 2, 2011	None	None.
ERT	West Cameron Area, Block 398, Platform B.	May 31 to June 10, 2011	Bottlenose dolphins (25) and Spotted dolphins (12).	None.
ERT	Vermillion Area, Block 61, Platform B	June 3 to 7, 2011	None	None.
ERT	West Cameron Area, Block 417, Caisson A.	June 8 to 9, 2011	None	None.
ERT	Brazos Area, Block 453, Platform A	June 14 to 20 and June 27 to July 3, 2011.	Bottlenose dolphins (87)	None.
ERT	Matagorda Island Area, Block 604, Platform A.	July 4 to 8 and July 10 to 12, 2011	Bottlenose dolphins (36)	None.

Company	Structure	Dates	Marine mammals sighted (individuals)	Biological impacts observed to marine mammals
ERT	South Marsh Island Area, Block 107, Platform B.	July 23 and August 4 to 8, 2011	None	None.

Pursuant to these regulations, NMFS has issued an LOA to ERT and Demex. Issuance of the LOAs is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS will review reports to ensure that the applicants are in compliance with meeting the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: February 16, 2012.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–4117 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Trademark Petitions

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 23, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov.* Include "0651–0061 comment" in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313–1451, by telephone at 571–272–8946, or by email to *catherine.cain@uspto.gov,* with "Paperwork" in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under "Information Collection Review."

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO. Individuals and businesses may also submit various communications to the USPTO, including letters of protest, requests to make special, responses to petition inquiry letters, petitions to make special, requests to restore a filing date, and requests for reinstatement.

A letter of protest is an informal procedure whereby third parties who object to the registration of a mark in a pending application may bring to the attention of the USPTO evidence bearing on the registrability of a mark. A letter of protest must identify the application being protested and the proposed grounds for refusing registration and include relevant evidence to support the protest.

A request to make special may be submitted where an applicant's prior registration was cancelled due to the inadvertent failure to file a post registration maintenance document and should include an explanation of why special action is appropriate.

A response to a petition inquiry letter is submitted by a petitioner who is responding to a notice of deficiency that the USPTO issued after receiving an incomplete Petition to the Director. A petition may be considered incomplete if, for example, it does not include the fee required by 37 CFR 2.6 or if it includes an unverified assertion that is not supported by evidence.

The USPTO generally examines applications in the order in which they are received. A petition to make special is a request by the applicant to advance the initial examination of an application out of its regular order.

A request to restore a filing date is submitted by an applicant who previously filed an application that was denied a filing date. The request must include evidence showing that the applicant is entitled to the earlier filing date.

If an applicant has proof that an application was inadvertently abandoned due to a USPTO error, an applicant may file a request to reinstate the application instead of a formal petition to revive. To support such a request, the applicant must include clear evidence of the USPTO error.

The information in this collection can be submitted in paper format or electronically through the Trademark Electronic Application System (TEAS). The USPTO has developed a TEAS Global Form format that permits the agency to collect information electronically for which a TEAS form with dedicated data fields is not yet available. With the introduction of the TEAS Global Forms, the information in this collection can be collected in paper format or electronically using the TEAS Global Forms.

As part of this renewal the USPTO proposes to add four TEAS Global Forms—for responses to petition inquiry letter, petitions to make special, requests to restore filing date, and requests for reinstatement—into the collection. The paper equivalents for the response to petition inquiry letter, petition to make special, request to restore filing date, and request for reinstatement will be added as well.

Although this collection does have electronic forms, there are no official

paper forms for these filings. Individuals and businesses can submit their own paper forms following the USPTO's rules and guidelines to ensure that all of the necessary information is provided.

II. Method of Collection

Electronically, if applicants submit the information using the new TEAS Global Forms. By mail, facsimile, or hand delivery if applicants choose to submit the information in paper form.

III. Data

OMB Number: 0651–0061.

Form Number(s): None.

Type of Review: Revision of a currently approved collection.

Affected Public: Primarily businesses or other for-profit organizations.

Estimated Number of Respondents: 2,135 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.50 hours) to one hour to gather the necessary information, create the document, and submit the completed request, depending upon whether the information is submitted electronically or on paper.

Estimated Total Annual Respondent Burden Hours: 1,689 hours.

Estimated Total Annual Respondent Cost Burden: $574,260. The USPTO expects that the information in this collection will be prepared by attorneys at an estimated rate of $340 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately $574,260 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Letter of Protest (TEAS Global)	50 minutes ...	187	155
Letter of Protest (Paper)	1 hour	1,063	1,063
Request to Make Special (TEAS Global)	30 minutes ...	90	45
Request to Make Special (Paper)	40 minutes ...	10	7
Response to Petition to Director Inquiry Letter (TEAS Global)	30 minutes ...	19	10
Response to Petition to Director Inquiry Letter (Paper)	40 minutes ...	5	3
Petition to Make Special (TEAS Global)	30 minutes ...	135	68
Petition to Make Special (Paper)	40 minutes ...	15	10
Request to Restore Filing Date (TEAS Global)	30 minutes ...	1	1
Request to Restore Filing Date (Paper)	40 minutes ...	10	7
Request for Reinstatement (TEAS Global)	30 minutes ...	480	240
Request for Reinstatement (Paper)	40 minutes ...	120	80
Totals	.....	2,135	1,689

Estimated Total Annual (Non-hour) Respondent Cost Burden: $15,550. This collection has annual (non-hour) costs in the form of postage costs and filing fees.

The public may submit the non-electronic information in this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the majority of submissions for these paper forms are made via first-class mail at a cost of 45 cents per submission. The total estimated postage cost for this collection is $550 (1,223 paper submissions × $0.45).

The only item in this information collection with a filing fee is the Petition to Make Special, with a filing fee of $100. The total estimated filing fee cost for this collection is $15,000.

Item	Responses (a)	Filing fee ($) (b)	Total non-hour cost burden (a) × (b) (c)
Petition to Make Special (TEAS Global)	135	$100.00	$13,500.00
Petition to Make Special (Paper)	15	100.00	1,500.00
Total	150	.....	15,000.00

Therefore, the total estimated (non-hour) respondent cost burden in postage costs and filing fees for this information collection is $15,550.

IV. Request for Comments

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 (including hours and cost) 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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 16, 2012.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2012–4085 Filed 2–21–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0022]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 23, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (MPP) (Compensation), ATTN: Mr. Gary McGee, 4000 Defense Pentagon, Washington, DC 20301–4000 or call (703) 693–1059.

Title, Associated Form, and OMB Control Number: Survivor Benefit Plan (SBP)/Reserve Component (RC) SBP Request for Deemed Election; DD Form 2656–10, OMB Number 0704–0448.

Needs and Uses: This information collection requirement is necessary to properly identify and establish the eligibility of a former spouse for an SBP election to be deemed on behalf of a retired military member. A former spouse must file for a deemed election within one year from the date of a court order or filing of a written agreement specifying former spouse or former spouse and child SBP coverage.

Affected Public: Individuals or households.

Annual Burden Hours: 500.

Number of Respondents: 1,500.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: One-time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

A former spouse who has been awarded coverage under the Survivor Benefit Plan, either by court order or written agreement, may, within one year of such court order or written agreement submit a request to have an election for such coverage deemed on behalf of the member. Such request will be made by submitting the proposed form and a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person; or a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable state law.

A former spouse is not required to submit a request for a deemed election. However, if a request for deemed election is not submitted within the one year period described in the previous paragraph and the member fails to elect former spouse SBP coverage, no former spouse coverage will be provided.

The DD Form 2656–10, "Survivor Benefit Plan (SBP)/Reserve Component (RC) SBP Request for Deemed Election," is currently the prescribed form required for submitting such request.

Dated: February 16, 2012.

Aaron Siegel,

Alternote OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2012–4063 Filed 2–21–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 23, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 16, 2012.

Stephanie Valentine,

Acting Director, Information Collection Cleoronce Division, Privocy, Information ond Records Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: Paul Douglas Teacher Scholarship Program Performance Report.

OMB Control Number: 1840–0787.

Agency Form Number(s): ED Form 40–31P.

Total Estimated Number of Annual Responses: 30.

Total Estimated Annual Burden Hours: 360.

Abstract: The purpose of this collection is to ensure that state education agencies are monitoring the fulfillment of the scholarship obligations by former Douglas scholars in accordance with legislation and regulations that governed the Paul Douglas Teacher Scholarship Program when the scholarships were granted.

The respondents to this collection are former participating state education agencies (SEAs). This performance report is the only vehicle by which Federal program officials may annually monitor, evaluate and ensure the compliance and enforcement of the program statute and regulations by state education agencies, that were shared with the SEAs at the time the scholarships were granted.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 04762. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–4055 Filed 2–21–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

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), Idaho National Laboratory. 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, March 14, 2012, 8 a.m.–5 p.m.

Opportunities for public participation will be from 11:45 a.m. to 12 p.m. and from 2:15 p.m. to 2:30 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or email: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.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 Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Recent Public Involvement and Outreach
- Progress to Cleanup Status
- Idaho Cleanup Project (ICP) Workforce Reductions
- Advanced Mixed Waste Cleanup Project (AMWTP) Workforce/Project Status
- Idaho-EM Budget Update
- Update on Sodium Flash Event
- Integrated Waste Treatment Unit Startup Status
- EM/National Nuclear Security Administration Integration
- Ecological Surveys
- Ground Water
- Waste Area Group—Future Work Plan

Public Participation: The EM SSAB, Idaho National Laboratory, 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 Robert L. Pence 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 Robert L. Pence at the address or 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 or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://inlcab.energy.gov/pages/meetings.php.*

Issued at Washington, DC on February 16, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–4061 Filed 2–21–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Unconventional Resources Technology Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 8, 2012, 11 a.m.–12:45 p.m. (EST).

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: (202) 586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on

development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999.

Tentative Agenda

10:30 a.m. Registration

11 a.m. Welcome and Roll Call; Opening Remarks by the Committee Chair; Report by the Editing Subcommittee; Facilitated Discussion by the Members regarding Final Report; Approval of Committee Final Report.

12:30 p.m. Public Comments, if any

12:45 p.m. Adjourn

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. Individuals who would like to attend must RSVP to *UnconventionalResources@hq.doe.gov* no later than 5 p.m. on Wednesday, March 7, 2012. Please provide your name, organization, citizenship and contact information. Space is limited. Anyone attending the meeting will be required to present government issued identification. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the telephone number listed above. You must make your request for an oral statement at least three business days prior to the meeting, and reasonable provisions will be made to include all who wish to speak. Public comment will follow the three minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the following Web site: *http://www.fossil.energy.gov/programs/oilgas/advisorycommittees/UnconventionalResources.html.*

Issued at Washington, DC on February 15, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–4083 Filed 2–21–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee Meeting

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee (EAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Monday, March 5, 2012, 2 p.m.–5 p.m. (EST).

Tuesday, March 6, 2012, 8 a.m.–4 p.m. (EST).

ADDRESSES: Ronald Reagan International Building, Horizon Room, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Matthew Rosenbaum, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–017, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (202) 586–1060 or Email: *matthew.rosenbaum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Electricity Advisory Committee (EAC) was re-established in July 2010, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse background selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to electricity.

Tentative Agenda: The meeting of the EAC is expected to include discussion of the activities of the Energy Storage Technologies Subcommittee, the Smart Grid Subcommittee, the Transmission Subcommittee, and a discussion of potential study topics for consideration by the EAC, as requested by the DOE's Office of Electricity Delivery and Energy Reliability.

Tentative Agenda: March 5, 2012

1:30 p.m.–2 p.m.—Registration.

2 p.m.–2:30 p.m.—Welcome and Introductions.

2:30 p.m.–5 p.m.—Discussion of Key Energy Issues and Important Federal and Regional Developments.

5 p.m.—Adjourn Day One of EAC Meeting.

Tentative Agenda: March 6, 2012

8 a.m.–8:30 a.m.—Day Two Opening Remarks.

Session I: Electric Transmission

8:30 a.m.–9:15 a.m.—Discussion of Key Transmission Issues from Day 1.

9:15 a.m.–10:15 a.m.—Session 1: Transmission Subcommittee Focus Areas and Action Plan for 2012.

10:15 a.m.–10:30 a.m.—Break.

Session II: Energy Storage Technologies

10:30 a.m.–11:15 a.m.—Discussion of Key Storage Issues from Day 1.

11:15 a.m.–2:15 p.m.—Session 1: Storage Subcommittee Focus Areas and Action Plan for 2012.

12:15 p.m.–1:15 p.m.—Lunch (Provided to EAC members; Others Are on Your Own).

Session III: Smart Grid

1:15 p.m.–2 p.m.—Discussion of Key Smart Grid Issues from Day 1.

2 p.m.–3 p.m.—Smart Grid Subcommittee Focus Areas and Action Plan for 2012.

3 p.m.–3:15 p.m.—Break.

3:15 p.m.–3:45 p.m.—Public Comments (Must register to comment at time of check-in).

3:45 p.m.–4 p.m.—Wrap Up of March 2012 EAC Meeting.

4 p.m.—Adjourn:

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC Web site at: *http://www.oe.energy.gov/eac.htm.*

Public Participation: The EAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the EAC meeting may do so on Tuesday, March 6, 2011, but must register at the registration table in advance. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement to Mr. Matthew Rosenbaum.

You may submit comments, identified by "*Electricity Advisory Committee Open Meeting,*" by any of the following methods:

- *Mail/Hand Delivery/Courier:* Matthew Rosenbaum, Office of

Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–017, 1000 Independence Avenue SW., Washington, DC 20585.

• *Email: matthew.rosenbaum@hq.doe.gov.* Include "Electricity Advisory Committee Open Meeting" in the subject line of the message.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. *Instructions:* All submissions received must include the agency name and identifier. All comments received will be posted without change to *http://www.oe.energy.gov/eac.htm,* including any personal information provided.

• *Docket:* For access to the docket, to read background documents or comments received, go to *http://www.oe.energy.gov/eac.htm.*

The following electronic file formats are acceptable: Microsoft Word (.doc), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. You must also explain the reasons why you believe the deleted information is exempt from disclosure.

DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11).

The EAC will also hold meetings in Washington, DC on June 11–12, 2012 and October 15–16, 2012. The venue and agenda will be provided in future notices.

Note: Delivery of the U.S. Postal Service mail to DOE may be delayed by several weeks due to security screening. The Department, therefore, encourages those wishing to comment to submit comments electronically by email. If comments are submitted by regular mail, the Department requests that they be accompanied by a CD or diskette containing electronic files of the submission.

Minutes: The minutes of the EAC meeting will be posted on the EAC Web page at *http://energy.gov/oe/services/electricity-advisory-committee-eac.* They can also be obtained by contacting Mr. Matthew Rosenbaum at the address above.

Issued in Washington, DC, on February 15, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–4048 Filed 2–21–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Ultra-Deepwater Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Thursday, March 8, 2012, 1 p.m.–3 p.m. (EST).

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: (202) 586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater architecture and technology to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999D.

Tentative Agenda:

12:30 p.m. Registration

1:00 p.m. Welcome and Roll Call; Opening Remarks by the Committee Chair; Report by the Editing Subcommittee; Facilitated Discussion by the Members regarding Final Report; Approval of Committee Final Report.

2:45 p.m. Public Comments, if any

3:00 p.m. Adjourn

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. Individuals who would like to attend must RSVP to *UltraDeepwater@hq.doe.gov* no later than 5 p.m. on Wednesday, March 7, 2012. Please provide your name, organization, citizenship and contact information. Space is limited. Anyone attending the meeting will be required to present government issued identification. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the telephone number listed above. You must make your request for an oral statement at least three business days prior to the meeting, and reasonable provisions will be made to include all who wish to speak. Public comment will follow the three minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the following Web site: *http://www.fossil.energy.gov/programs/oilgas/advisorycommittees/UltraDeepwater.html.*

Issued at Washington, DC, on February 15, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–4086 Filed 2–21–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–68–000.

Applicants: Stephentown Regulation Services LLC.

Description: Application of Stephentown Regulation Services LLC.

Filed Date: 2/9/12.

Accession Number: 20120209–5173.

Comments Due: 5 p.m. ET 3/1/12.

Docket Numbers: EC12–69–000.

Applicants: American Electric Power Service Corporation, Appalachian Power Company, Wheeling Power Company.

Description: Application for Authorization to Transfer Jurisdiction Under Section 203 of the Federal Power Act of American Electric Power Service Corporation.

Filed Date: 2/10/12.

Accession Number: 20120210–5050.

Comments Due: 5 p.m. ET 3/27/12.

Docket Numbers: EC12–70–000.

Applicants: American Electric Power Service Corporation, Appalachian Power Company, Kentucky Power Company, AEP Generation Resources Inc.

Description: Application for Authorization to Transfer Jurisdiction Under Section 203 of the Federal Power Act of American Electric Power Service Corporation.
Filed Date: 2/10/12.
Accession Number: 20120210–5053.
Comments Due: 5 p.m. ET 3/27/12.
Docket Numbers: EC12–71–000.
Applicants: Ohio Power Company, American Electric Power Service Corporation, AEP Generation Resources Inc.
Description: Application for Authorization to Transfer Jurisdictional Assets Under Section 203 of the Federal Power Act of American Electric Power Service Corporation.
Filed Date: 2/10/12.
Accession Number: 20120210–5059.
Comments Due: 5 p.m. ET 3/12/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3084–002; ER11–3097–002, ER10–1212–001; ER10–1277–001; ER10–1211–001; ER10–1188–001; ER10–1186–001; ER10–1187–001; ER11–2954–002; ER11–4626–001.
Applicants: The Detroit Edison Company, DTE Energy Trading, Inc. DTE River Rouge No.1, LLC, DTE East China, LLC, DTE Pontiac North, LLC, DTE Stoneman, LLC, DTE Energy Supply, LLC, Woodland Biomass Power Ltd., Mt. Poso Generation Company, LLC, DTE Calvert City, LLC.
Description: Notice of Change in Status of The Detroit Edison Company, *et. al.*
Filed Date: 2/9/12.
Accession Number: 20120209–5172.
Comments Due: 5 p.m. ET 3/1/12.
Docket Numbers: ER12–645–002.
Applicants: California Ridge Wind Energy LLC.
Description: Second Supplement to Market-Based Rate Application to be effective 2/20/2012.
Filed Date: 2/10/12.
Accession Number: 20120210–5047.
Comments Due: 5 p.m. ET 3/2/12.
Docket Numbers: ER12–1038–000.
Applicants: Perrin Ranch Wind, LLC.
Description: Perrin Ranch Wind, LLC Amendment to MBR Application to be effective 1/1/2012.
Filed Date: 2/9/12.
Accession Number: 20120209–5098.
Comments Due: 5 p.m. ET 3/1/12.
Docket Numbers: ER12–1039–000.
Applicants: The Empire District Electric Company.
Description: The Empire District Electric Company submits tariff filing per 35.13(a)(2)(iii: GFR Template Detail Attachment D to be effective 1/1/2012.
Filed Date: 2/10/12.
Accession Number: 20120210–5002.
Comments Due: 5 p.m. ET 3/2/12.
Docket Numbers: ER12–1040–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits Notice of Termination of Electric Rate Schedule No. 117.
Filed Date: 2/9/12.
Accession Number: 20120209–5178.
Comments Due: 5 p.m. ET 3/1/12.
Docket Numbers: ER12–1041–000.
Applicants: AEP Generation Resources Inc.
Description: AEP Generation Resources Inc. submits tariff filing per 35.12: SSO Filing to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5030.
Comments Due: 5 p.m. ET 3/12/12.
Docket Numbers: ER12–1042–000.
Applicants: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, AEP Generation Resources Inc., Ohio Power Company.
Description: Appalachian Power Company submits tariff filing per 35.13(a)(2)(iii: 20120210 2 Power Sharing and Bridge Agreement APCo to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5032.
Comments Due: 5 p.m. ET 3/12/12.
Docket Numbers: ER12–1043–000.
Applicants: Kentucky Power Company.
Description: 20120210 3 Power Sharing and Bridge Agreement KPCo to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5034.
Comments Due: 5 p.m. ET 3/12/12.
Docket Numbers: ER12–1044–000.
Applicants: Indiana Michigan Power Company.
Description: 20120210 4 Power Sharing and Bridge Agreement IM to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5036.
Comments Due: 5 p.m. ET 3/12/12.
Docket Numbers: ER12–1045–000.
Applicants: AEP Generation Resources Inc.
Description: 20120210 5 Bridge Agreement AEP Gen to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5037.
Comments Due: 5 p.m. ET 3/12/12.
Docket Numbers: ER12–1046–000.
Applicants: Ohio Power Company.
Description: 20120210 6 Bridge Agreement OPCo to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5038.
Comments Due: 5 p.m. ET 3/12/12.
Docket Numbers: ER12–1047–000.
Applicants: Appalachian Power Company, Kentucky Power Company, AEP Generation Resources Inc.
Description: 20120210 7 Sporn Mitchell APCo to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5040.
Comments Due: 5 p.m. ET 3/27/12.
Docket Numbers: ER12–1048–000.
Applicants: Kentucky Power Company.
Description: 20120210 8 Mitchell KPCo to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5041.
Comments Due: 5 p.m. ET 3/27/12.
Docket Numbers: ER12–1049–000.
Applicants: AEP Generation Resources Inc.
Description: 20120210 9 Sporn AEP Gen to be effective 12/31/9998.
Filed Date: 2/10/12.
Accession Number: 20120210–5042.
Comments Due: 5 p.m. ET 3/27/12.
Docket Numbers: ER12–1050–000.
Applicants: Midwest Independent Transmission System, Wolverine Power Supply Cooperative, Inc.
Description: Wolverine-Tower Kleber WDS to be effective 2/11/2012.
Filed Date: 2/10/12.
Accession Number: 20120210–5056.
Comments Due: 5 p.m. ET 3/2/12.
Docket Numbers: ER12–1051–000.
Applicants: Midwest Independent Transmission System, Wolverine Power Supply Cooperative, Inc.
Description: Wolverine IAs (2417 & 2418) to be effective 4/12/2012.
Filed Date: 2/10/12.
Accession Number: 20120210–5057.
Comments Due: 5 p.m. ET 3/2/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For

other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4024 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–378–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Request for Limited Waiver of Filing Date for Annual Transportation Costs Rate Adjustment Filing of Columbia Gas Transmission, LLC.
Filed Date: 2/10/12.
Accession Number: 20120210–5194.
Comments Due: 5 p.m. ET 2/17/12.
Docket Numbers: RP12–379–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits for filing a report of the penalty and daily delivery variance charge (DDVC) revenues for the period November 1, 2010 through October 31, 2011 that have been credited to Shippers.
Filed Date: 2/13/12.
Accession Number: 20120213–5030.
Comments Due: 5 p.m. ET 2/27/12.
Docket Numbers: RP12–380–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—February 14, 2012 Negotiated Rate Agreements and Nonconforming SA to be effective 3/1/2012.
Filed Date: 2/14/12.
Accession Number: 20120214–5053.
Comments Due: 5 p.m. ET 2/27/12.
Docket Numbers: RP12–382–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transco Market Area Pooling Pro Forma Revisions to be effective N/A.
Filed Date: 2/14/12.
Accession Number: 20120214–5144.
Comments Due: 5 p.m. ET 2/27/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1604–002.
Applicants: KO Transmission Company.
Description: Compliance Filing to be effective 11/1/2010.
Filed Date: 2/14/12.
Accession Number: 20120214–5032.
Comments Due: 5 p.m. ET 2/27/12.
Docket Numbers: RP11–76–003.
Applicants: Bison Pipeline LLC.
Description: Compliance to RP11–76 to be effective 1/14/2011.
Filed Date: 2/14/12.
Accession Number: 20120214–5048.
Comments Due: 5 p.m. ET 2/27/12.
Docket Number: CP09–418–001.
Applicants: Perryville Gas Storage LLC.
Description: Abbreviated for Amendment of Perryville Gas Storage LLC.
Filed Date: 01/26/2012.
Accession Number: 20120126–5080.
Comments Due: 5 p.m. ET 2/21/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4023 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–28–000]

Xcel Energy Services Inc., Northern States Power Company v. American Transmission Company, LLC; Notice of Complaint

Take notice that on February 14, 2012, pursuant to section 206 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), Xcel Energy Services Inc. (XES) and Northern States Power Company (NSPW) collectively filed a formal complaint against American Transmission Company, LLC (ATC) regarding the construction and ownership of a proposed 145 mile, 345 kV electric transmission line connecting NSPW's facilities near La Crosse, Wisconsin, with ATC's facilities near Madison, Wisconsin. XES and NSPW request that the Commission (1) find that ATC has not compiled with express terms and conditions of the Transmission Owners Agreement and the Midwest ISO Tariff and (2) direct ATC to enter into negotiations with XES and NSPW to develop final terms and conditions for the shared ownership and construction of the La Cross–Madison Line.

XES and NSPW certify that copies of the complaint were served on the contacts for ATC as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 5, 2012.

Dated: February 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4073 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11834–057]

FPL Energy Maine Hydro, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969, as amended, and Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Commission has reviewed a request to replace the spillway at the Upper Dam development, which is part of the Upper and Middle Dam Storage Project (FERC No. 11834). The purpose of the action is to satisfy the Commission's Division of Dam Safety and Inspections required remediation under 18 CFR Part 12. The licensee seeks Commission approval to conduct the spillway replacement. This environmental assessment (EA) analyzes the environmental impacts of the proposed spillway repairs and concludes that approval of the request, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment. The project is located on the outlet from Mooselookmeguntic Lake in Oxford and Franklin Counties, Maine.

The EA was written by staff in the Commission's Office of Energy Projects. A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Dated: February 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4076 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–106–002]

SourceGas Distribution LLC; Notice of Filing

Take notice that on February 14, 2012, SourceGas Distribution LLC submitted a revised baseline filing of their Statement of Operating Conditions to comply with an unpublished Delegated letter order issued on January 31, 2012.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 2012.

Dated: February 15, 2012.

Kimberly D. Bose

Secretary.

[FR Doc. 2012–4072 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–12–001]

Arcadia Gas Storage, LLC; Notice of Filing

Take notice that on February 13, 2012, Arcadia Gas Storage, LLC filed a revised Statement of Operating Conditions to further define the priority of service of its proposed Enhanced Authorized Overrun Service.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 2012.

Dated: February 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4078 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–021]

Progress Energy Carolinas, Inc.; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Updated shoreline management plan.

b. *Project No:* 2206–021.

c. *Date Filed:* December 19, 2011.

d. *Applicant:* Progress Energy Carolinas, Inc.

e. *Name of Project:* Yadkin-Pee Dee Hydroelectric Project.

f. *Location:* Lake Tillery in Montgomery and Stanly counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Larry Mann, Progress Energy Carolinas, Inc., 179 Tillery Dam Rd., Mt. Gilead, NC 27306, (919) 546–5300.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 16, 2012.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2206–021) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Progress Energy Carolinas, Inc. (licensee) filed an updated shoreline management plan (SMP) for Lake Tillery, one of the project's reservoirs. The current SMP was approved on November 24, 2004, and included a provision for the licensee to update the SMP every 10 years. The licensee's goal for the updated SMP is to balance the protection and enhancement of the environmental, scenic, and recreational values provided by Lake Tillery and the surrounding project lands, while ensuring the continued safe and reliable production of hydroelectric power at the project. Among other things, the updated SMP includes a more recent shoreline habitat survey and a reduction in the number of shoreline classifications.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4075 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13254–002]

City of Aspen; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13254–002.

c. *Date Filed:* December 12, 2011.

d. *Submitted By:* City of Aspen.

e. *Name of Project:* Castle Creek Hydroelectric Project.

f. *Location:* On Maroon and Castle Creeks near the City of Aspen, in Pitkin County, Colorado. Parts of the Castle Creek Hydroelectric Project would occupy federal lands of the White River National Forest.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* David Hornbacher, City of Aspen, 130 South Galena Street, Aspen, CO 81611.

i. *FERC Contact:* Jim Fargo at (202) 502–6095; or email at *james.fargo@ferc.gov.*

j. City of Aspen filed its request to use the Traditional Licensing Process on December 12, 2011. The city provided public notice of its request on December 19, 2011. In a letter dated February 2, 2012, the Director of the Office of Energy Projects approved the City of Aspen's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR Part 402; and (b) the Colorado State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City of Aspen as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. City of Aspen filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4012 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM11–14–000]

Order Reaffirming Commission Policy and Terminating Proceeding; Analysis of Horizontal Market Power Under the Federal Power Act

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

1. On March 17, 2011, the Commission issued a Notice of Inquiry[1] seeking comment on whether, and, if so, how, the Commission should revise its approach to examining horizontal market power concerns under section 203 of the Federal Power Act (FPA)[2] to reflect the Horizontal Merger Guidelines issued by the Department of Justice (DOJ) and Federal Trade Commission (FTC) (collectively, Antitrust Agencies) on August 19, 2010 (2010 Guidelines). The Commission also sought comment on what impact, if any, the 2010 Guidelines should have on the Commission's analysis of horizontal market power in its electric-market based rate program under section 205 of the FPA.[3] Seventeen parties filed comments in response to the NOI.[4]

2. As discussed below, after reviewing the comments received, the Commission has decided to retain its existing policies regarding the analysis of horizontal market power when reviewing transactions under section 203 of the FPA and in its electric market-based rate program. Accordingly, we will terminate the proceeding in Docket No. RM11–14–000.

I. Background

A. Section 203

3. Under section 203 of the FPA, Commission authorization is required for public utility mergers and consolidations and for public utility acquisitions of jurisdictional facilities. Section 203(a) provides that the Commission shall approve such transactions if they are consistent with the public interest. The Commission has stated that it will consider three factors when analyzing a proposed merger: the effect on competition, the effect on rates, and the effect on regulation.[5] The Energy Policy Act of 2005 added the further requirement that the Commission determine whether a proposed transaction would result in cross-subsidization, and if so, whether the resulting cross-subsidization would be consistent with the public interest.[6]

4. The Commission adopted the five-step framework set out in the Antitrust Agencies' 1992 Horizontal Merger Guidelines (1992 Guidelines)[7] as the basic framework for evaluating the competitive effects of proposed mergers.[8] The Commission also adopted an analytic screen (Competitive Analysis Screen), based on the 1992 Guidelines and outlined in Appendix A of the Merger Policy Statement, which focuses on the first step in the analysis: Whether the merger would significantly increase concentration in relevant markets. The components to a screen analysis are as follows: (1) Identify the relevant products; (2) identify customers who may be affected by the merger; (3) identify potential suppliers to each identified customer (includes a delivered price test (DPT) analysis, consideration of transmission capability, and a check against actual trade data); and (4) analyze market concentration using the Herfindahl-Hirschman Index (HHI)[9] thresholds from the 1992 Guidelines.[10]

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[1] *Analysis of Horizontal Market Power under the Federal Power Act*, Notice of Inquiry, 76 FR 16,394 (Mar. 23, 2011), FERC Stats. & Regs. ¶ 35,571 (2011) (NOI).

[2] 16 U.S.C. 824b (2006).

[3] 16 U.S.C. 824d (2006).

[4] A list of the commenters is provided in Appendix A.

[5] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (Merger Policy Statement), *reconsideration denied*, Order No. 592–A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement).

[6] Energy Policy Act of 2005, Public Law 109–58, 1289, 119 Stat. 594, 982–83 (2005), *codified*, 16 U.S.C. 824b(a)(4).

[7] U.S. Dept. of Justice & Federal Trade Commission, "Horizontal Merger Guidelines" (1992), as revised (1997) (1992 Guidelines).

[8] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,118, 30,130. The five steps are: (1) Assess whether the merger would significantly increase concentration and result in a concentrated market, properly defined and measured; (2) assess whether the merger, in light of market concentration and other factors that characterize the market, raises concern about potential adverse competitive effects; (3) assess whether market entry would be timely, likely and sufficient either to deter or counteract the competitive effects of concern; (4) assess whether the merger would result in increases in efficiency that cannot reasonably be achieved through the parties by other means; and (5) assess whether either party to the merger would fail without the merger, causing its assets to exit the market. *Id.* at 30,111.

[9] The HHI is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Both the Antitrust Agencies and the Commission use HHI to assess market concentration.

[10] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,119–20, 30, 128–37.

5. The Commission stated that the Competitive Analysis Screen is intended to identify mergers that clearly do not raise competitive concerns early in the process and that it believes that the screen produces a reliable, generally conservative analysis of the competitive effects of a proposed merger.[11] The Commission acknowledged, however, that the screen is not infallible. Accordingly, the Commission stated that claims that the screen has failed to detect certain market power problems or disputes about the way that a particular analysis has been conducted can be raised by intervenors and Commission staff. The Commission also stated that intervenors may file alternative competitive analyses, accompanied by appropriate data, to support their arguments.[12]

B. Market-Based Rates

6. The Commission allows sales of electric energy, capacity, and ancillary services at market-based rates if the applicant and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.[13] The Commission adopted two indicative screens, the wholesale market share screen and the pivotal supplier screen, to identify sellers that raise no horizontal market power concerns and can otherwise be considered for market-based rate authority.[14] The wholesale market share screen measures whether a seller has a dominant position in the market in terms of the number of megawatts of uncommitted capacity owned or controlled by the seller, as compared to the uncommitted capacity of the entire market.[15] A seller whose share of the relevant market is less than 20 percent during all seasons passes the market share screen.[16] The pivotal supplier screen evaluates the seller's potential to exercise market power based on the seller's uncommitted capacity at the time of annual peak demand in the relevant market.[17] A seller satisfies the pivotal supplier screen if its uncommitted capacity is less than the net uncommitted supply in the relevant market.[18] Failing either screen creates a rebuttable presumption that the seller has horizontal market power.[19] If a seller passes both screens, however, there is a rebuttable presumption that it does not possess horizontal market power.

7. A seller that fails either indicative screen has several procedural options. It has the right to present alternative evidence to rebut the presumption of horizontal market power, including a DPT.[20] In the alternative, a seller may accept the presumption of market power and adopt some form of cost-based mitigation.[21] Sellers use the results of the DPT to perform pivotal supplier and market share analyses. In addition, sellers use the results of the DPT to analyze market concentration using HHI. The Commission stated that a showing of an HHI less than 2,500 in the relevant market for all season/load periods for sellers that have also shown that they are not pivotal and do not posses a market share of 20 percent or greater in any of the season/load periods would constitute a showing of a lack of market power, absent compelling contrary evidence from intervenors. The Commission stated that, as with the indicative screens, a seller may submit alternative evidence to rebut or support the results of the DPT, such as historical sales or transmission data.[22]

C. Notice of Inquiry

8. The NOI highlighted some features of the 2010 Guidelines and how those guidelines differ from the Commission's process for reviewing mergers under section 203 of the FPA. In particular, the Commission noted that the 2010 Guidelines modify the thresholds used to classify the relative concentration of a market and to assess the competitive significance of a post-merger change in HHI, as summarized in the table below.[23]

Market	1992 Guidelines	2010 Guidelines
HHI (Market Concentration) Thresholds		
Unconcentrated	<1000	<1500
Moderately Concentrated	1000–1800	1500–2500
Highly Concentrated	>1800	>2500
HHI Changes Potentially Raising Significant Competitive Concerns		
Moderately Concentrated Markets	>100	>100
Concentrated Markets	>50	>100, <200
HHI Changes Presumed Likely to Enhance Market Power		
Concentrated Markets	>100	>200

9. In addition, the Commission explained that the 2010 Guidelines deemphasize market definition as a starting point for the Antitrust Agencies' analysis and depart from the sequential analysis of the 1992 Guidelines. Instead, the 2010 Guidelines state that the Antitrust Agencies will engage in a fact-specific inquiry using a variety of analytical tools, including direct evidence of competition between the parties and economic models that are designed to quantify the extent to which the merged firm can raise prices as a result of the merger.[24] The Commission further noted that the 2010 Guidelines address the potential competitive effects arising from partial acquisitions and

[11] *Id.* at 30,119.

[12] *Id.*

[13] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 1, 4, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel* v. *FERC*, 659 F.3d 910 (9th Cir. 2011).

[14] *Id.* P 13, 62.

[15] *Id.* P 43.

[16] *Id.* P 43–44, 80, 89.

[17] *Id.* P 35.

[18] *Id.* P 42.

[19] *Id.* P 44.

[20] *Id.* P 63; 18 CFR 35.37(c)(2) (2011).

[21] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 63; 18 CFR 35.37(c)(3) (2011).

[22] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 117.

[23] NOI, FERC Stats. & Regs. ¶ 35,571 at P 12.

[24] *Id.* P 13.

minority ownership. Specifically, the Commission stated that the Antitrust Agencies' analysis of partial acquisitions and minority ownership focuses on: (1) Whether the acquiring company will be able to influence the competitive conduct of the target firm; (2) whether the partial acquisition will reduce the financial incentive to compete because losses from one owned firm are offset by gains at the other; and (3) whether the partial acquisition enables companies to access non-public competitive information that can lead to coordinated activity by the firms.[25]

10. The NOI sought comment on whether the Commission should revise its approach for examining horizontal market power when analyzing proposed mergers or other transactions under section 203 of the FPA and when analyzing market-based rate filings under section 205 of the FPA to reflect the 2010 Guidelines. The Commission asked whether the Commission should, like the 2010 Guidelines, place less emphasis on market definition as the first step in its analysis and move away from the use of a sequential analysis for analyzing horizontal market power under section 203 of the FPA. Additionally, the Commission asked what elements of the 2010 Guidelines the Commission should adopt and sought comments on whether the Commission should adopt the HHI thresholds contained in the 2010 Guidelines. Finally, the Commission sought comment on what impact, if any, the 2010 Guidelines should have on the Commission's analysis of horizontal market power in its electric market-based rate program.[26]

II. Discussion

11. As further discussed below, after careful consideration of the comments submitted in response to the NOI, the Commission has decided to retain its existing approaches to analyzing horizontal market power under section 203 of the FPA and in its analysis of electric market-based rates under section 205 of the FPA.

[25] *Id.* P 14. The Commission noted that issues relating to partial acquisitions are among the issues before the Commission in Docket No. RM09–16–000. *Id.* P 14, n.27 (citing *Control and Affiliation for Purposes of Market-Based Rate Requirements under Section 205 of the Federal Power Act and the Requirements of Section 203 of the Federal Power Act*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,650 (2010) (Control and Affiliation NOPR)).

[26] *Id.* P 15–21.

A. Section 203 Analysis

1. Comments in Support of Retaining the Commission's Current Analysis

a. Market Definition and Market Concentration

12. A number of commenters argue that the Commission should continue to emphasize market definition and the calculation of market shares and market concentration as the first step in its analysis. EEI, EPSA, and Dr. Morris, a consultant with Economists Incorporated, state that the Competitive Analysis Screen provides certainty to applicants and, as a result, produces better filings and assists applicants in determining whether their proposals raise competitive concerns and require remedies.[27] Dr. Morris adds that preparing a Competitive Analysis Screen is relatively inexpensive when compared with computer simulation models. Dr. Morris observes that, while the DOJ conducts competitive effects analyses and the models used by the agency have advanced, the modeling that DOJ uses has not yet provided more reliable information on the competitive effects of a merger than the market concentration screens used by the Commission.[28] EEI states that the Commission's methodology strikes the appropriate balance in identifying transactions that pose a threat of competitive harm while providing a streamlined process for approving ones that do not.[29]

13. Additionally, several commenters maintain that the analysis embodied in the 2010 Guidelines is incompatible with the realities of the Commission's process of reviewing mergers and other transactions under section 203 of the FPA. In particular, these commenters note that, unlike the procedures used by the Antitrust Agencies, proceedings under section 203 are required to be on-the-record and the Commission's decision must be presented in a published order, subject to the requirements of reasoned decision making and the possibility of judicial review.[30] Commenters also claim that it would be infeasible to conduct the type of analysis envisioned by the 2010 Guidelines in the 180-day time period prescribed by Congress and that the Commission's current methodology facilitates timely decisions by the Commission.[31]

[27] Morris Comments at 21–22; EEI Comments 5–9; EPSA Comments at 7–8.

[28] Morris Comments at 21.

[29] EEI Comments at 6–8.

[30] *Id.* at 9–12; EPSA Comments at 5–6.

[31] EEI Comments at 12–14; EPSA Comments at 5–6; Morris Comments at 20.

14. Moreover, commenters explain that the Commission need not resort to the open-ended process embraced in the 2010 Guidelines to protect the public interest and that the Commission has the experience necessary to determine what methodologies are appropriate for assessing market power in electricity markets.[32] Modesto states that application of the Commission's current analysis will better protect consumers from the anticompetitive effects of mergers.[33] Similarly, APPA, NRECA, ELCON, and NASUCA state that the Antitrust Agencies' efforts to revise their analysis and the changes embodied in the 2010 Guidelines are tied to the characteristics of markets with differentiated products where, unlike markets for electricity, ascertaining the relevant market and assessing market concentration are less relevant for identifying competitive concerns.[34] ELCON and NASUCA add that the Commission has already adopted an approach that reflects those changes that are most relevant to electricity markets by expressing a willingness to look beyond changes in HHI.[35] APPA and NRECA state that while the Commission should consider whether some of the analytical tools described in the 2010 Guidelines would prove useful in the Commission's merger analysis, these tools should not act as substitutes for market definition and market concentration.[36]

15. A number of commenters argue that the Commission's current analytical framework already permits the consideration of the evidence identified in the 2010 Guidelines when appropriate. Mr. Cavicchi, Senior Vice President at Compass Lexecon, notes that the Commission has already acknowledged that the Commission should consider additional evidence of competitive effects where an applicant fails the Competitive Analysis Screen. Mr. Cavicchi asserts, however, that it would be appropriate in such circumstances to collaborate with the Antitrust Agencies to reduce the burden on the applicant.[37] TAPS and TDU Systems state that the 2010 Guidelines highlight the need for the Commission to consider intervenor theories of competitive harm, regardless of whether

[32] EEI Comments at 9, 14–15; EPSA Comments at 6–7.

[33] Modesto Comments at 4.

[34] APPA and NRECA Comments at 9–10; ELCON and NASUCA Comments at 4.

[35] ELCON and NASUCA Comments at 4.

[36] APPA and NRECA Comments at 2–3.

[37] Cavicchi Comments at 6–7 (citing Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253, at P 65).

the proposed transaction passes the Competitive Analysis Screen.[38]

b. HHI Thresholds

16. A number of commenters argue that the Commission should retain its existing HHI thresholds. TAPS, TDU Systems, ELCON, and NASUCA caution the Commission against selectively incorporating particular aspects of the 2010 Guidelines, especially the HHI thresholds.[39] These commenters state that the 2010 Guidelines should be viewed as a comprehensive whole and that the 2010 Guidelines' relaxation of the HHI thresholds is merely one small element of a broader analytical overhaul. TAPS and TDU Systems further note that the Antitrust Agencies have different statutory obligations than the Commission and that, even before the Antitrust Agencies adopted the 2010 Guidelines, the Commission and the Antitrust Agencies implemented merger review in the context of the electric industry differently.[40]

17. Commenters also claim that the more relaxed HHI thresholds embodied in the 2010 Guidelines are inappropriate in electricity markets. The New York Commission, ELCON, NASUCA, APPA, NRECA and Monitoring Analytics state that the Commission's current thresholds remain appropriate because electricity markets are more susceptible to the exercise of market power—due to the large capital investments associated with entry, the lack of substitutable products, the lack of storage, and the relative inelasticity of demand—than many of the industries that the Antitrust Agencies review.[41] APPA and NRECA add that there is no evidence that the current thresholds are too low, result in too many false positives, or that the electricity industry has undergone changes that warrant relaxing the Commission's thresholds.[42] TAPS and TDU Systems agree that there have been no changes supporting modification of the thresholds and that adopting the revised thresholds would undermine the Commission's ability to fulfill its statutory mandate and to accurately assess the competitive impact of a merger.[43] Similarly, Modesto notes that the Commission faces challenges in identifying the scope of market power in analyzing section 203 applications and argues that relaxing the HHI thresholds would serve to frustrate those efforts by easing scrutiny over affiliates and companies whose relationship to the applicant company is not readily apparent.[44] AAI states that lower thresholds may be appropriate in electric markets because the adverse effects of electric utility mergers are not likely to be mitigated by entry or efficiencies.[45]

18. Berkeley argues that the Commission should not make any decision to change its HHI thresholds without first directing Commission staff to study consummated electric mergers in order to determine whether the current thresholds have been effective, and compare the results to alternative predictions of competitive impacts.[46]

c. Other Aspects of the 2010 Guidelines

19. While, as noted below, EPSA supports the adoption of the HHI thresholds contained in the 2010 Guidelines, EPSA contends that the Commission should refrain from adopting other aspects of the 2010 Guidelines. In particular, EPSA states that the Commission should not adopt the 2010 Guidelines' approach to partial acquisitions and minority ownership and that the Commission's analysis should continue to focus on control. EPSA notes that the provisions of the federal antitrust statutes that the Antitrust Agencies are charged with enforcing apply to transactions involving one firm's partial acquisition of a competitor and the minority position that may result, whereas the Commission has made clear that transactions that do not transfer control of a public utility do not fall within the meaning of the "or otherwise dispose" language of section 203(a)(1)(A) and that the requirement to obtain the Commission's approval under the "merge or consolidate" clause in section 203(a)(1)(B) depends upon whether the transaction directly or indirectly would result in a change of control over the facilities.[47] EPSA states that there is no justification for engaging in a case-by-case consideration of virtually every single direct or indirect acquisition of interests in a public utility and, as the Commission has previously recognized, requiring case-by-case approval under section 203 would be contrary to the intent of Congress that the Energy Policy Act of 2005 increase investment in the utility sector while protecting customers.[48] EPSA urges the Commission to move forward with a final rule in Docket No. RM09–16–000.[49]

2. Comments in Support of Adopting the 2010 Guidelines

a. Market Definition and Market Concentration

20. Several commenters argue that the Commission should adopt the 2010 Guidelines because the Competitive Analysis Screen may not accurately identify competitive concerns in all circumstances. FTC Staff and the PPL Companies state that over-reliance on measures of HHI, particularly in electricity markets, can yield conclusions that are too lenient or too restrictive in an assessment of market power.[50] FTC Staff states that it believes that consideration of other types of evidence identified in the 2010 Guidelines would enrich the Commission's analysis of mergers, including observations about the actual effect of consummated mergers, direct comparison based on experience, evidence of substantial head-to-head competition, and the potentially disruptive role of a merging party, unilateral and coordinated effects of a transaction, and the competitive effect of the transaction on dimensions of competition other than price.[51] The PPL Companies argue that the Commission's over-reliance on HHI thresholds has allowed applicants to tailor their applications to avoid triggering the HHI thresholds without truly addressing the likely anticompetitive effects of a proposed transaction. Therefore, they argue that the Commission should supplement its use of market concentration statistics with evidence of whether a merger may enhance or lessen competition.[52]

21. AAI argues that the Commission should supplement its analysis of market concentration by considering additional evidence of competitive effects. AAI maintains that the differences between the Commission's review process and those of the Antitrust Agencies do not pose an impediment to adopting the 2010 Guidelines because all of the agencies tend to focus on competitive concerns and much of the information necessary to assess competitive effects, such as

[38] TAPS and TDU Systems Comments at 16–17.

[39] *Id.* at 4, 6–7; ELCON and NASUCA Comments at 5.

[40] TAPS and TDU Systems Comments at 6–7.

[41] New York Commission Comments at 3–4; ELCON and NASUCA Comments at 4–5; APPA and NRECA Comments at 2; Monitoring Analytics Comments at 6.

[42] APPA and NRECA Comments at 2, 10–17.

[43] *Id.* at 11–12.

[44] Modesto Comments at 4–5.

[45] AAI Comments at 15.

[46] Berkeley Comments at 5.

[47] EPSA Comments at 10–11.

[48] *Id.* at 12 (citing *Transactions Subject to Federal Power Act Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200, at P 144 (2005)).

[49] *Id.* at 13.

[50] FTC Staff Comments at 2; PPL Companies Comments at 5–8.

[51] FTC Staff Comments at 2, 4–7.

[52] PPL Companies Comments at 16.

prices, identity of rivals, and capacity, are public.[53] AAI states, for example, that evidence could be used to ensure that the markets established by the DPT accurately reflect the potential impact of the merger, to corroborate the findings of the concentration analysis, and to determine whether merging parties have been or, absent the merger, would become head-to-head competitors.[54]

22. Similarly, while acknowledging that many aspects of the 2010 Guidelines are inapplicable to electricity markets, Monitoring Analytics recommends that the Commission consider some of the additional evidence identified in the 2010 Guidelines, such as the actual effects observed in wholesale electricity markets, the competitiveness of isolated wholesale electricity markets with varying market concentration, and whether, absent the merger, the merging firms would have become substantial head-to-head competitors.[55]

23. The Brattle Group maintains that the Competitive Analysis Screen may not always yield conservative results because the DPT, by examining a merger's effect on one market at a time, ignores whether suppliers may have a better opportunity to sell in markets where they may obtain higher prices. Thus, the Brattle Group maintains that the Commission should look beyond HHI, focus on whether a merger will change incentives such that there will be an increase in market price, and not wait for a merger to fail the screen to implement a case-specific theory of competitive harm. The Brattle Group encourages the Commission not to abandon the use of market concentration statistics, but to set out guiding principles in assessing merger effects based on a theory of competitive harm tailored to the realities of the market at issue at an early stage of the review.[56]

24. Several commenters ask the Commission to refine its approach to defining the relevant geographic market. Mr. Cavicchi argues that the Commission should pay close attention to market definition. While Mr. Cavicchi states that the Commission's current approach to defining markets is suitable in many instances, it could be enhanced by drawing on additional electric system data that is often readily available. For example, he states that an analysis of market pricing data for the purposes of delineating geographic markets can be extremely informative in some situations.[57] The PPL Companies also state that the Commission should clarify that applicants must use direct evidence to establish the relevant markets that they propose.[58] The Brattle Group states that the Commission should improve how the DPT model screens for potential suppliers by taking into account each potential supplier's opportunity costs.[59]

25. Monitoring Analytics states that the Commission should refine its approach to assessing market definition in organized markets by using actual information about market participants and operations instead of using approximations of seasonal geographic markets that assume the model of individual utility territories to define the market. Monitoring Analytics further states that it recommends that the Commission use market definitions based on actual operational substitutability and residual supplier analysis to examine the relative importance of the merging firms based on pre- and post-merger positions in every relevant market.[60]

26. Dr. Morris recommends that the Commission review its position on destination markets because the Commission has issued some inconsistent rulings on submarkets and because facts change over time. According to Dr. Morris, the Commission has acted inconsistently by accepting a study of a submarket where only one of the merging parties had assets in some cases, but not in others.[61] Therefore, Dr. Morris asks the Commission to clarify that parties do not need to analyze submarkets in Regional Transmission Organizations (RTO) when only one of the merging parties owns generation in that submarket. Additionally, Dr. Morris states that the Commission should consider whether PJM Interconnection-East and Southwest Connecticut still need to be considered separate destination markets for DPTs in light of recent developments that have reduced constraints in these areas.[62] While he expresses support for the Commission's analysis as a general matter, Dr. Morris states that the Commission could consider both the relevant market and alternate relevant markets created by regional and local constraints.

b. HHI Thresholds

27. A number of commenters argue that the Commission should adopt the 2010 Guidelines' HHI thresholds. In particular, Dr. Morris, Mr. Cavicchi, Entergy, the PPL Companies, EPSA, and EEI claim that the Commission should adopt these thresholds because they reflect the substantial experience of the Antitrust Agencies, which indicates that a merger will not enhance market power below these levels. They also argue that ongoing oversight of the electric markets by the Commission and market monitors provide protections against any perceived danger arising from adopting these thresholds.[63] Dr. Morris adds that adopting these thresholds is appropriate because, according to Dr. Morris, the Commission rigidly applies its HHI thresholds and the HHI thresholds contained in the 2010 Guidelines more accurately reflect the likelihood of anticompetitive effects than the Commission's current thresholds.[64] Mr. Cavicchi argues that data compiled by the Antitrust Agencies clearly shows that the majority of merger challenges in various industries' markets (other than petroleum markets) have been focused on markets where post-merger HHIs have been greater than 2,400.[65]

c. Other Aspects of the 2010 Guidelines

28. The PPL Companies also propose the following modifications to the Commission's analysis: (1) Focus exclusively on available economic capacity because only those firms with available economic capacity could defeat any attempts by the merged firm to increase prices or reduce output;[66] (2) consider the merger's impact on the supply curve;[67] (3) consider initiating a separate proceeding to examine reforms and clarify the criteria to simplify the calculation of Simultaneous Import Limits (SIL);[68] and (4) after the Commission adopts these changes to its analysis, consider and seek comments on whether changes to the Commission's procedures are necessary, such as permitting limited discovery and informal technical conferences upon motion of an intervenor or having

[53] AAI Comments at 5–7.

[54] *Id.* at 15–17.

[55] Monitoring Analytics Comments at 2–5.

[56] Brattle Group Comments 5–10.

[57] Cavicchi Comments at 5–6.

[58] PPL Companies Comments at 11–12.

[59] Brattle Group Comments at 10–11.

[60] Monitoring Analytics Comments at 2–3.

[61] Morris Comments at 25–27 (citing *USGen New England, Inc.*, 109 FERC ¶ 61,361 (2004); FirstEnergy Corp., Application for Authorization of Disposition of Jurisdictional Assets, Docket No. EC10–68 (filed May 11, 2010)).

[62] *Id.* at 26.

[63] *Id.* at 23–24; Cavicchi Comments at 3; Entergy Comments at 1–2; PPL Companies Comments at 14–16; EPSA Comments at 8–9; EEI Comments at 17–19.

[64] Morris Comments at 23.

[65] Cavicchi Comments at 3.

[66] PPL Companies Comments at 13–14.

[67] *Id.* at 17–19.

[68] *Id.* at 19–20.

separate staff investigate and comment on a proposed transaction.[69]

29. As an initial matter, AAI asks that the Commission more formally coordinate with the Antitrust Agencies, in a manner similar to the current relationship between the Federal Communications Commission and the Antitrust Agencies, to ensure greater consistency in remedies, analysis, and findings. AAI also reviewed analyses filed with the Commission between 1997 and 2004, which revealed a high degree of variation in concentration results for the same market, even when these analyses were performed by the same experts.[70] According to AAI, its analysis suggests that the Commission may want to consider initiating an inquiry into the modeling methods, data sources, and assumptions used in the Competitive Analysis Screen and that the Commission may want to take steps to build a more complete record in merger proceedings by including certain types of information discussed in the 2010 Guidelines. AAI further asserts that the Commission should consider crafting filing requirements to ensure that the Commission, intervenors, and the public have sufficient evidence to conduct competitive effects analysis, which is essential when determining if a merged firm is likely to exercise market power and, if so, what the appropriate remedy should be.[71]

30. While APPA and NRECA state that the Commission should continue to emphasize market definition and the calculation of market shares and market concentration as the first step in its analysis, they state that the Commission should adopt additional tools, such as diversion ratios and critical loss analysis, to help it in its analysis, to the extent possible. However, they emphasize that these tools should not be a substitute for the Commission's existing analysis, including the Competitive Analysis Screen.[72]

31. Several commenters argue that the Commission should adopt the 2010 Guidelines' approach to analyzing monopsony power (buyer market power). Noting that the Commission has previously acknowledged that an evaluation of buyer market power may be appropriate in some instances, AAI suggests that the Commission should take the following approaches when evaluating such issues: (1) The Commission should avoid relying on market power mitigation measures in organized markets to address buyer market power issues raised in merger cases; (2) the Commission's standard, as in the 2010 Guidelines, should be whether the merged firm will be able to impose worse terms on its trading partners; and (3) the Commission should distinguish between mergers that are likely to create or enhance monopsony power and those mergers where the presence of seller market power in an upstream market may serve as an opposing force to buyer market power in a downstream market, which may be procompetitive in some circumstances.[73] Similarly, FTC Staff argues that the Commission should take into account sections 8 and 12 of the 2010 Guidelines, which relate to powerful buyers and monopsony power. FTC Staff explains that section 8 relates to the ability of powerful buyers to forestall the adverse competitive effects flowing from a merger and that, under this section, the Antitrust Agencies examine the choices available to such buyers, how these choices would change due to the merger, and whether the negotiating strength of some buyers impact the competitive effects of a merger on other buyers. FTC Staff further explains that section 12 of the 2010 Guidelines addresses the competitive effects of mergers of competing buyers and focuses on alternatives available to suppliers when a merger reduces the number of buyers.[74]

32. AAI; FTC Staff, APPA, and NRECA urge the Commission to analyze partial acquisitions in a manner consistent with the 2010 Guidelines. In particular, AAI contends that, in light of the 2010 Guidelines' discussion of partial acquisitions, the Commission should revise its analysis to ensure that the Commission fully considers the potential adverse effects of partial ownership by avoiding bright-line tests, evaluating any evidence that would help establish a competitive concern surrounding the transaction, and, if evidence points to a potential competitive concern, determining the degree to which the private investor at issue will have control, participation, or other influence over decisions that affect competitive strategy.[75] Similarly, FTC Staff notes that the 2010 Guidelines indicate that the Antitrust Agencies will consider all ways in which a partial acquisition may affect competition and focus in particular on the acquiring party's influence over the competitive conduct of the firm, reductions in the incentives of the acquiring and target firms to compete with each other, and access by the acquiring firm to non-public information.[76] Likewise, APPA and NRECA argue that the Commission should revise Part 33 of its regulations to require section 203 applications involving partial acquisitions to address the three potential adverse competitive effects identified in section 13 of the 2010 Guidelines and should require applicants to demonstrate that the acquisitions do not present these anti-competitive concerns or to propose mitigation measures.[77]

33. FTC Staff also argues that the Commission should consider embracing aspects of the 2010 Guidelines addressing the competitive effects of entry and efficiencies. FTC Staff explains that the 2010 Guidelines recognize that easy, rapid, and substantial entry into the relevant market could discipline market power and that efficiencies generated by a merger could enhance competition by spurring innovation, reducing costs, or improving quality. FTC Staff notes, however, that it expects that, given the characteristics of the energy industry, reliance on entry to address adverse competitive effects will be rare and that efficiencies of a merger should only carry weight to the extent that they would not be achieved absent the merger.[78]

3. Commission Determination

34. After carefully considering the comments that were submitted, the Commission has decided to retain its existing approach for analyzing horizontal market power under section 203 of the FPA. More specifically, and as further discussed below, the Commission will retain the five-step framework for assessing the competitive effects of a proposed transaction, with the first step consisting of the Competitive Analysis Screen, because we find that the approach remains useful in determining whether a merger will have an adverse impact on competition.

35. As the Commission has previously stated, the Competitive Analysis Screen is intended to provide a standard, generally conservative check to allow the Commission, applicants, and intervenors to quickly identify mergers that are unlikely to present competitive problems.[79] Based on the comments that

[69] *Id.* at 20–23.

[70] AAI Comments at 10–14.

[71] *Id.* at 17–18.

[72] APPA and NRECA Comments at 22.

[73] AAI Comments at 22–23.

[74] FTC Staff Comments at 8.

[75] AAI Comments at 20–21.

[76] FTC Staff Comments at 9.

[77] APPA and NRECA Comments at 25.

[78] FTC Staff Comments at 8.

[79] *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111, at 31,879 (2000) (Filing

Continued

we have received, we believe that the Competitive Analysis Screen remains an important tool for evaluating mergers on the basis of their effect on market structure and performance while also providing analytic and procedural certainty to industry at a relatively low cost.

36. While several commenters argue that the Commission is overly rigid in its application of the Competitive Analysis Screen, we believe that the current approach is flexible enough to incorporate theories set forth in the 2010 Guidelines, while still retaining the certainty that the current approach provides. The Commission has previously made clear that it will consider other evidence of anticompetitive effects beyond HHI. As noted above, in the Merger Policy Statement the Commission stated that questions about whether the screen has accurately captured market power arising from a merger may be raised through interventions and by Commission staff.[80] The Commission reaffirmed this policy in the Filing Requirements Rule[81] and the Supplemental Policy Statement. In the Filing Requirements Rule, the Commission clarified that applicants with screen failures could address market conditions beyond the change in HHI "such as demand and supply elasticity, ease of entry and market rules, as well as technical conditions, such as the types of generation involved," [82] and identified four factors it would consider if a merger applicant fails the Competitive Analysis Screen.[83] In the Supplemental Policy Statement, the Commission stated that it will consider a case-specific theory of competitive harm, which includes, but is not limited to, an analysis of the merged firm's ability and incentive to withhold output in order to drive up prices. The Commission added that it would consider theories of competitive harm raised by intervenors, even if an applicant passes the Competitive Analysis Screen.[84]

37. Not only has the Commission stated that it will look beyond the HHI screens, the Commission has done so in practice. For example, in *FirstEnergy Corp*, the Commission found that a proposed merger would not have an adverse effect on horizontal competition despite three screen failures because these failures occurred in off-peak periods during which the applicants had a relatively low market share.[85] In addition, in response to commenters that argued that the applicants' proposal would provide the applicants with the ability and incentive to raise prices, the Commission considered the fact that any withholding strategy could be detected by the relevant market monitor and that the Commission had previously found that companies would not be able to profitably withhold output where the generating units at issue are baseload units.[86] In *National Grid*, the Commission found that a proposed transaction would not have an adverse impact on competition, despite the presence of screen failures, because the applicants lacked the ability to withhold output due to provider of last resort obligations and to the applicants' obligations under long-term power sale agreements in the relevant geographic markets.[87]

38. Given this flexibility and the benefits of the Competitive Analysis Screen, we decline to adopt the 2010 Guidelines as the framework for the Commission's analysis of horizontal market power. We reiterate, however, that the Commission may consider arguments that a proposed transaction raises competitive concerns that have not been captured by the Competitive Analysis Screen. Likewise, while applicants must continue to provide a Competitive Analysis Screen, we will also consider any alternative methods or factors, if adequately supported. Further, we note that the Commission has various procedural methods to obtain additional information where appropriate.[88]

39. In addition, the Commission declines to adopt the HHI thresholds contained in the 2010 Guidelines. As the Commission has previously stated, the Competitive Analysis Screen is intended to be "conservative enough so that parties and the Commission can be confident that an application that clears the screen would have no adverse effect on competition." [89] In light of the purpose of the Competitive Analysis Screen, we agree with commenters who state that more stringent thresholds are appropriate, especially given the distinctive characteristics of electricity markets. We also agree with commenters that it is an inappropriate application of the 2010 Guidelines to selectively incorporate the HHI thresholds from the 2010 Guidelines without other aspects and that doing so could undermine the Commission's ability to accurately assess the competitive effects of a merger. While a number of commenters claim that the Commission should adopt the 2010 Guidelines' HHI thresholds because the thresholds reflect the experience of the Antitrust Agencies, we note that the Antitrust Agencies administer antitrust law across multiple industries. In contrast, the Commission has extensive experience with electrical markets and shapes its analysis to reflect the realities of those markets. Based on that experience, we will retain the current HHI thresholds.

40. With respect to the PPL Companies' request that we clarify the calculation of SILs, we note that the Commission recently issued an order providing further direction and clarification on the performance and reporting of such studies in connection with market-based rate filings.[90] The Commission believes that the direction provided in that order can also assist with the preparation of SIL studies for section 203 purposes and ensure that applicants have the guidance necessary to prepare SIL studies consistent with the Commission's requirements. At present, we see no need to modify the requirements with respect to the preparation of SIL studies. Our experience is that studies that are performed consistently with the Commission's current requirements provide reasonably accurate and conservative estimates of the supply of electricity that can be simultaneously imported into a given geographic market.

41. With regard to the 2010 Guidelines' analysis of partial acquisitions and minority ownership we note that the Commission's existing approach to control is not contrary to the approach set out in the 2010 Guidelines. For instance, the Commission has found that a minority

Requirements Rule), *order on reh'g*, Order No. 642–A, 94 FERC ¶ 61,289 (2001).

[80] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,119.

[81] Filing Requirements Rule, FERC Stats. & Regs. ¶ 31,111 at 31,897.

[82] *Id.*

[83] *Id.* at 31,898. The four factors listed by the Commission are: (1) The potential adverse competitive effects of the merger; (2) whether entry by competitors can deter anticompetitive behavior or counteract adverse competitive effects; (3) the effects of efficiencies that could not be realized absent the merger; and (4) whether one or both of the merging firms is failing and, absent the merger, the failing firm's assets would exit the market.

[84] Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 60, 65.

[85] *FirstEnergy Corp*, 133 FERC ¶ 61,222, at P 49 (2010).

[86] *Id.* P 50.

[87] *National Grid, plc*, 117 FERC ¶ 61,080, at P 26–28 (2006).

[88] *See, e.g.*, 18 CFR 33.10 (2011) (stating that the "Director of the Office of Energy Market Regulation * * * may, by letter, require the applicant to submit additional information as is needed for analysis of an application filed under this part").

[89] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,119.

[90] *See Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011).

interest can confer control over the acquired company and has conditioned its approval of such transactions on restrictions limiting the ability to exercise control.[91] The Commission has also imposed certain restrictions on information sharing as a condition of its approval under section 203 in order to remedy competitive concerns arising from a partial acquisition.[92] We also note that issues relating to partial acquisitions are among the issues before the Commission in Docket No. RM09–16–000.[93]

42. Turning to the suggestion that the Commission should incorporate the 2010 Guidelines' discussion of monopsony power, we note that in the Merger Policy Statement the Commission stated that "an analysis of monopsony power should be developed if appropriate" and that "[l]ong-term purchases and sales data for interconnected entities * * * could be used to assess buyer concentration in the same way that seller concentration is calculated."[94] The Commission left open the possibility that buyer market power created by a merger may need to be evaluated to find that a transaction is consistent with the public interest. As we have done in the past,[95] we will continue to consider the issue of buyer market power on a case-by-case basis.

43. We note that, while Dr. Morris asks the Commission to clarify that it will consider alternative relevant markets that are created by regional and local constraints, the Commission has previously done so when provided with evidence in support of the existence of such a market. The Commission will remain flexible in its approach and will reevaluate whether a previously recognized submarket continues to exist if the evidence shows that the persistent transmission constraints that led to the recognition of that submarket are no longer present. We clarify that we will not require applicants to submit a DPT for an identified submarket if the applicants do not have overlapping generation within the submarket and lack firm transmission rights to import capacity into that market.

44. With respect to commenters' suggestions that the Commission use actual operational data in defining markets or that the Commission should consider opportunity costs in market definition, we are not persuaded to require section 203 applicants to provide that information on a generic basis. While we recognize that the Commission's current methodology may not precisely capture market conditions in all circumstances, we continue to believe that the DPT provides an appropriate method for determining suppliers in a market and is a well-established test for the electric industry. Further, we are concerned that information about actual market information may not be equally available to all applicants and, therefore, will not require all applicants to craft their analyses using such data. Nevertheless, the Commission will consider adequately supported alternative analyses based on such data.

45. Regarding AAI's request that the Commission formally coordinate with the Antitrust Agencies, we note that Commission staff has had discussions with staff from the Antitrust Agencies regarding several mergers.[96] We acknowledge that coordination is valuable and will continue to coordinate with staff from the Antitrust Agencies in the future, as appropriate, on a case-by-case basis. Accordingly, we find no need to initiate a more formal coordination procedure with the Antitrust Agencies. Further, we will decline to initiate further formal general inquiry into the procedure for merger review, the modeling methods used and data sources relied upon in those models, or the hypothetical results that may arise if the Commission had relied on alternative methodology. However, the Commission may perform any of the above inquiries on a case-by-case basis.

46. Additionally, we will decline to adopt the PPL Companies' suggestion to modify our analysis to focus exclusively on available economic capacity. We believe that both the economic capacity and available economic capacity measures remain useful. While we have acknowledged that one measure may be more relevant in certain circumstances, we continue to believe that requiring applicants to provide analyses using both economic capacity and available economic capacity will ensure that the Commission has a more complete record on which to make its determination of whether the proposed transaction will have an adverse effect on competition.[97]

B. Electric Market-Based Rate Program

1. Comments in Support of Retaining the Current Analysis

47. TAPS, TDU Systems, APPA, and NRECA support retaining the Commission's current analysis because the Commission's analysis of HHI is already consistent with the 2010 Guidelines and the Commission does not yet have sufficient experience with the existing standards to warrant changing its analysis.[98] APPA and NRECA add that the Commission's analysis of horizontal market power in its electric market-based rate program is not directly tied to the Antitrust Agencies' merger guidelines and there is no evidence that the thresholds used by the Commission are too high and are denying market-based rate authority to public utilities that should have it.[99] Similarly, TAPS and TDU Systems state that there is no reason to change the Commission's threshold for the market share screen and that the 2010 Guidelines actually discard the presumption that merging firms are significant direct competitors if their combined market share is at least 35 percent in recognition of the fact that a merger can present market power concerns even if the market share of the combined companies is less than 35 percent.[100]

48. Additionally, Monitoring Analytics, ELCON, and NASUCA state that the thresholds for the market share, pivotal supplier, and market concentration analyses remain appropriate because the electricity markets are still characterized by significant barriers to entry, limited substitutes, lack of storage, and inelastic demand.[101] Modesto believes that the continued application of the Commission's current market-based rate analysis will better protect consumers than embracing the 2010 Guidelines.[102] Finally, EPSA states that the Commission should refrain from adopting the 2010 Guidelines' analysis of partial acquisitions and minority ownership.

[91] *See Entegra Power Group, LLC*, 125 FERC ¶ 61,143, at P 40 (2008) (imposing conditions to prevent possible control of multiple public utilities in the same relevant geographic market through the acquisition of minority ownership interests that would create market power).

[92] *See Mach Gen, LLC*, 127 FERC ¶ 61,127, at P 37 (2009) (conditioning approval of a partial acquisition on the commitment to not share information regarding (a) planned maintenance windows, (b) outages, (c) marketing strategies, (d) contracts, (e) volumes, (f) prices, or (g) other operational data).

[93] Control and Affiliation NOPR, FERC Stats. & Regs. ¶ 32,650.

[94] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at P 80.

[95] *See NSTAR*, 136 FERC ¶ 61,016, at P 51–52 (2011).

[96] *See Duke Energy Corp.*, Notice of Proposed Communication with Department of Justice, 135 FERC ¶ 61,213, (2011); *Exelon Corporation*, Notice of Proposed Communication with Department of Justice, 136 FERC ¶ 61,161 (2011).

[97] *Kansas City Power and Light Co.*, 113 FERC ¶ 61,074 at P 30–32, 35 (2005).

[98] TAPS and TDU Systems Comments at 12–14; APPA and NRECA Comments at 26–28.

[99] APPA and NRECA Comments at 28.

[100] TAPS and TDU Systems Comments at 12–13.

[101] Monitoring Analytics Comments at 8–9; ELCON and NASUCA Comments at 5–6.

[102] Modesto Comments at 4–5.

2. Comments in Support of Modifying the Current Analysis

49. AAI maintains that the Commission should consider bringing its market-based rate analysis in line with the 2010 Guidelines for the same reasons that it argues the Commission should conform its analysis under section 203 to the 2010 Guidelines. AAI argues that there are a number of problems with the indicative screens that challenge the goal of consistent and transparent competition policy. Specifically, AAI states that both the pivotal supplier and market share screens address unilateral effects scenarios, which ignore the complex dynamics among firms in oligopoly markets that determine price and output levels, and are bright-line tests that determine whether an applicant is presumed to have market power as opposed to whether the firm has the ability and incentive to exercise it.[103]

50. FTC Staff states that the same types of information that are discussed in the 2010 Guidelines are useful in the determination of whether a supplier already has market power, although the inquiry may be somewhat different than in the merger context. FTC Staff states that market definition in a non-merger matter seeks to identify customer alternatives at the competitive price. According to FTC Staff, a failure to ensure that customer alternatives are analyzed at the competitive price can result in a serious error, such as defining the market too broadly if customers are searching more widely for alternatives in response to an already supracompetitive price. FTC Staff claims that the proper application of the 2010 Guidelines in the context of market-based rate reviews will help avoid such errors.[104]

51. Dr. Morris contends that the wholesale market share screen is flawed, as approximately 75 percent of traditionally vertically-integrated utilities outside of an RTO fail the screen in their own balancing authority area regardless of the competitive conditions in that area. Accordingly, he recommends replacing the wholesale market share screen for utilities outside of RTOs or, in the alternative, allowing applicants that fail the wholesale market share screen to conduct a screen comparing the wholesale load to be served during the next three years in a market to the number of available suppliers in the area. He states that the Commission would need to specify the number of suppliers that are necessary to obtain workably competitive prices and would grant market-based rate authority if there are a sufficient number of suppliers. He notes that his own research has indicated that three suppliers are sufficient to drive competitive rates down to the level achieved by cost-based regulation.[105]

52. EPSA argues that the Antitrust Agencies' decision to increase the HHI thresholds contained in the 2010 Guidelines warrants a corresponding increase in the threshold used for the wholesale market share indicative screen from 20 percent to 30 percent, or, at the very least, to 25 percent. EPSA claims that the Antitrust Agencies' decision to increase the HHI threshold from 1,800 to 2,500 has eliminated the basis for the Commission's objections to the use of a market share threshold higher than 20 percent. EPSA states that any further proposed changes to the Commission's market-based rate analysis should be explored in depth in a separate proceeding or supplemental NOI.[106]

53. The PPL Companies state that the Commission should not modify the indicative screens, but state that there are some aspects of the reforms adopted in the 2010 Guidelines that would merit consideration where there has been an initial screen failure, such as a fact-specific analysis of relevant markets, a focus on available economic capacity, and any reforms the Commission adopts for the determination of SILs in the section 203 context.[107]

3. Other Issues

54. Mr. Reutter argues that, if the Commission modifies its market-based rate analysis to reflect the HHI thresholds contained in the 2010 Guidelines, the Commission should adopt the same criteria for gas storage facilities that request market-based rate authority.[108]

4. Commission Determination

55. The Commission will not modify the current market power analysis utilized for electric market-based rate applications to reflect the 2010 Guidelines.[109] The Commission's market-based rate analysis is not explicitly tied to the Antitrust Agencies' merger guidelines and commenters fail to identify any feature within those guidelines that warrant a change to the program. We note that the HHI threshold used by the Commission in the market-based rate analysis (2,500) is already consistent with the thresholds recently adopted in the Antitrust Agencies' 2010 Guidelines (also 2,500).

56. With respect to the use of the indicative screens, we will retain the current thresholds. While EPSA argues that the Antitrust Agencies' decision to raise the threshold for a highly concentrated market undercuts the Commission's reasoning in retaining the existing threshold for the market share screen, we disagree. In Order No. 697, the Commission found that a conservative approach at the indicative screen stage of the Commission's analysis is appropriate because a seller is presumed not to possess horizontal market power if the seller passes both of the screens.[110] The Commission has found that a 20 percent threshold is appropriate because a firm with a 20 percent market share is not likely to be a "fringe" firm that is not a significant factor in the market,[111] and in markets characterized by relatively low elasticity of demand, such as markets for electricity, market power is more likely to be present at lower market shares than in markets with high demand elasticity.[112] As the Commission has noted in the past, the 20 percent threshold strikes the appropriate balance between having a conservative but realistic screen and imposing undue regulatory burdens.[113] Thus, while the Commission mentioned the 1992 Guidelines in its discussion in Order No. 697, the Antitrust Agencies' decision to modify its thresholds does not warrant a concomitant change to the market share screen in the Commission's electric market-based rate program, as the Commission's reasoning was tied to the nature of the Commission's review of market-based rate filings and the physical and economic characteristics of markets for electricity. Also, while EPSA points to a recent Commission order[114] as support for the idea that the 20 percent threshold is too low and results in "false positives," EPSA fails to point to anything in that order that shows that the indicative screens resulted in a "false positive" and that the applicants'

[103] AAI Comments at 25–26.

[104] FTC Staff Comments at 10.

[105] Morris Comments at 28–30.

[106] EPSA Comments at 13–16.

[107] PPL Companies Comments at 24–26.

[108] Reutter Comments at 1–2.

[109] Since the Commission is not modifying its market-based rate analysis to reflect the HHI thresholds contained in the 2010 Guidelines, Mr. Reuter's request that if we did make such a change we adopt the same criteria for gas storage facilities that request market-based rate authority is moot.

[110] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 89.

[111] *AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026, at P 96 (2004).

[112] *Id.*; Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 89.

[113] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 90–91.

[114] *BE Louisiana, LLC*, 132 FERC ¶ 61,118 (2010).

filing did not warrant further scrutiny and the consideration of additional evidence.

57. The Commission disagrees with AAI's assertion that the indicative screens are flawed because they focus only on unilateral effects. While the pivotal supplier screen focuses on the ability of a seller to exercise market power unilaterally, as the Commission observed in Order No. 697, the market share screen focuses on both "unilateral market power and the ability of a seller to effect coordinated interaction with other sellers." [115] Additionally, while AAI criticizes the screens on the basis that they do not focus on the ability and incentive to exercise market power, the Commission has previously found and reiterates here that requiring sellers to submit screens that focus on the sellers' potential (i.e., ability) to exercise market power is consistent with the Commission's obligation to set policies that ensure that rates remain just and reasonable.[116]

58. Further, with respect to Dr. Morris's argument that the Commission should modify the market share screen because traditional vertically-integrated utilities outside of an RTO typically fail the screen, we note that Dr. Morris does not provide evidentiary support for this claim. Moreover, the Commission addressed and rejected a similar claim in the Order No. 697 proceeding.[117] Additionally, even assuming that Dr. Morris's assertion is accurate, the fact that a particular class of market participant often fails the market share screen does not mean that the screen is flawed. The screen is intended to be a conservative measure to identify those sellers that may raise market power concerns and merit additional scrutiny; it is not intended to ensure that a particular class of market participant routinely passes the Commission's analysis. Moreover, the alternative analysis that Dr. Morris proposes is a contestable load analysis, which the Commission has previously rejected.[118] There is no evidence that market conditions have changed such that the Commission should now accept this analysis.

59. As far as the suggestion that the Commission should consider fact-specific evidence of competitive harm or that the Commission should consider additional evidence when determining the relevant geographic market, we believe that the Commission's current analysis provides adequate flexibility to consider such arguments when raised by an applicant or an intervenor. The Commission has stated that an applicant that fails one of the indicative screens may submit alternative evidence, including a DPT or actual historical sales data, to rebut the presumption of market power. Thus, to the extent that an applicant has additional evidence regarding the competitive situation in a market, it is free to present that to the Commission and the Commission will consider that evidence on a case-by-case basis.[119] The Commission has further stated that intervenors may present alternative evidence, such as historical sales or transmission data, to support or rebut the results of the indicative screens.[120] In addition, in Order No. 697, the Commission stated that it would continue to allow sellers and intervenors on a case-by-case basis to show that some other geographic market should be considered as the relevant market in a particular case.

The Commission orders:

The proceeding in Docket No. RM11–14–000 is hereby terminated.

Dated: February 16, 2012.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix A: List of Commenters

Short name or acronym	Commenter
AAI	American Antitrust Institute.
APPA	American Public Power Association.
Berkeley	Carl Danner, Henry Kahwaty, Keith Reutter, and Cleve Tyler of the Berkeley Research Group.
Brattle Group.	Romkaew Broehm, Peter Fox-Penner, Oliver Grawe, and James Reitzes of The Brattle Group.
Cavicchi	A. Joseph Cavicchi.
EEI	Edison Electric Institute.
ELCON	Electricity Consumers Resource Council.
EPSA	Electric Power Supply Association.
Entergy	Entergy Services, Inc.
FTC Staff	Staff of the Federal Trade Commission.
Modesto	Modesto Irrigation District.
Monitoring Analytics.	Monitoring Analytics, LLC.
Morris	Dr. John Morris.
NASUCA	National Association of State Utility Consumer Advocates.
NARECA	National Rural Electric Cooperative Association.
New York Commission.	New York State Public Service Commission.
PPL Companies.	PPL Electric Utilities Corporation; Louisville Gas & Electric Company; Kentucky Utilities Company; LG&E Energy Marketing, Inc.; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; PPL Renewable Energy, LLC; PPL Montana, LLC; PPL Colstrip I, LLC; and PPL Colstrip II, LLC.
Reutter	Keith Reutter.
TAPS	Transmission Access Policy Study Group.
TDU Systems.	Transmission Dependent Utility Systems.

[FR Doc. 2012–4050 Filed 2–21–12; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–25–000]

Northeast Utilities Service Company; Notice of Petition for Declaratory Order

Take notice that on February 8, 2012, Northeast Utilities Service Company (NUSCO), on behalf of the Connecticut Light and Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company (collectively, NU Companies), filed a Petition for Declaratory Order, requesting that the Federal Energy Regulatory Commission (Commission) confirm that the use of at-cost pricing for the provision of certain non-power goods and services among the NU Companies through NUSCO as an accounting intermediary is appropriate, or in the alternative, waiver of the

[115] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 65.

[116] *Id.* P 70; *see also Westar Energy, Inc.*, 123 FERC ¶ 61,123 at P 22 (2008).

[117] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 82, 93 (rejecting the argument that a threshold of 20 percent was inappropriate due to the fact it is difficult for investor-owned utilities outside of RTOs/ISOs to fall below the threshold because the Commission already allowed applicants to deduct native load and had decided elsewhere in the order to increase the permissible deduction).

[118] *See, e.g., id.* P 66–67.

[119] *See, e.g., Dogwood Energy, LLC*, 135 FERC ¶ 61,089 (2011); *Shell Energy North America (US), L.P.*, 135 FERC ¶ 61,090 (2011).

[120] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 70; *see, e.g., AEP Power Marketing, Inc.*, 124 FERC ¶ 61,274, at P 34–36 (2008).

Commission "higher of cost or market" rule under Order No. 707.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 9, 2012.

Dated: February 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4014 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–26–000]

MATL LLP; Montana Alberta Tie, Ltd; Notice of Petition for Declaratory Order

Take notice that on February 13, 2012, MATL LLP (MATL) and Montana Alberta Tie Ltd (Montana Alberta Tie) (collectively, Applicants), filed a Petition for Declaratory Order, requesting that the Federal Energy Regulatory Commission (Commission) confirm that MATL will continue to have negotiated rate authority following the completion of a transaction under which Enbridge Inc. (Enbridge) has become the new ultimate owner of Applicants.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 14, 2012.

Dated: February 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4015 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *Cross-Subsidization Restrictions on Affiliate Transactions,* Order No. 707, 122 FERC ¶ 61,155 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4628–000]

PJM Interconnection, L.L.C.; Notice Establishing Post-Staff Technical Conference Comment Period

As indicated in the February 2, 2012 Supplement Notice, Supplemental Notice For Staff Technical Conference, in the above-captioned proceeding,[1] this notice establishes the due date for comments on the staff technical conference held on February 14, 2012 as 15 days from the date of the conference, or Wednesday, February 29, 2012. Reply comments are due seven days later on Wednesday, March 7, 2012.

Dated: February 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4011 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14329–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Grand Coulee Project Hydroelectric Authority

On December 1, 2011, the Grand Coulee Project Hydroelectric Authority filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Banks Lake Pumped Storage Project (Banks Lake Project or project) to be located on Banks Lake and Franklin D. Roosevelt Lake (Roosevelt Lake), near the town of Grand Coulee, Douglas and Grant Counties, Washington. The project would be located on federal lands administered by the U.S. Bureau of Reclamation (Reclamation) and the U.S. Bureau of Land Management (BLM). The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter

[1] Supplement Notice, *Supplemental Notice For Staff Technical Conference,* issued February 2, 2012.

upon lands or waters owned by others without the owners' express permission.

The proposed project has two alternatives:

Alternative 1

The proposed project would use Reclamation's existing Banks Lake as the upper reservoir and Roosevelt Lake as the lower reservoir. The proposed project would consist of the following new facilities: (1) An upper reservoir inlet/outlet structure equipped with trash racks; (2) a 1.5-mile-long penstock consisting of a vertical shaft, power tunnel segments, and a tailrace section, extending between the upper reservoir inlet/outlet and the reversible turbine/generator units in the powerhouse; (3) an underground powerhouse containing four reversible turbine/generator units rated for 250 megawatts (MW) each, for a total installed generation of 1,000 MW, or a powerhouse located on the shore of Roosevelt Lake, also containing four 250–MW reversible turbine/generator units; (4) a 2-mile-long, 500-kilovolt (kV) transmission line extending from the project powerhouse to an existing 500-kV substation; and (5) appurtenant facilities. The estimated annual generation of Alternative 1 for the Banks Lake Project would be 2,263 gigawatt-hours (GWh).

Alternative 2

The proposed project would use Reclamation's existing Banks Lake as the lower reservoir. The proposed project would consist of the following new facilities: (1) A new 312-acre upper reservoir constructed approximately 3,000 feet west of the existing Banks Lake, impounded by three earth and rockfill embankments, each with a crest elevation of 2,300 feet above mean sea level; (2) an upper reservoir inlet/outlet structure equipped with trash racks; (2) a 620-foot-long, 43-foot-diameter vertical shaft connecting the upper reservoir inlet/outlet structure to the power tunnels; (3) four 1,700-foot-long, 17-foot-diameter power tunnels leading from the vertical shaft to the powerhouse; (4) an underground powerhouse containing four reversible turbine/generator units rated for 260 MW each, for a total installed generation of 1,040 MW; (5) a 25-foot-diameter tailrace tunnel between the powerhouse and the existing Banks Lake; (6) a 2.4-mile-long, 500-kV transmission line extending from the project powerhouse to a new 500-kV substation; and (7) appurtenant facilities. The estimated annual generation of Alternative 2 for the Banks Lake Project would be 2,978 GWh.

Applicant Contact: Mr. Ronald K. Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, P.O. Box 219, Ephrata, WA 98823; phone: (509) 754–2227.

FERC Contact: Jennifer Harper; phone: (202) 502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14329) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4010 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14216–000]

Fall River Community Hydro Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 27, 2011, Fall River Valley Community Service District, California, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Fall River Community Hydro Project to be located on Fall River, near the town of Fall River Mills, Shasta County, California. The project affects federal lands administered by the Bureau of Land Management. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following facilities: (1) An open conduit that would deliver water from the Pit 1 diversion to a penstock; (2) an existing penstock connecting the conduit to the powerhouse; (3) two pump-turbines totaling 900 kilowatts (kW) (1 × 300 kW unit and 1 × 600 kW unit) of generating capacity; and (4) an existing 3-phase power line on site. The project's annual energy output would range from 4 to 6 gigawatt hours.

Applicant Contact: Mr. John Van den Bergh, Fall River Valley Community Service District, P.O. Box 427, Fall River Mills, California 96028; phone (530) 336–5263.

FERC Contact: Carolyn Templeton; phone: (202) 502–8785.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the

eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 858 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14216–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4077 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13272–003]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Alaska Village Electric Cooperative

On February 13, 2012, Alaska Village Electric Cooperative (AVEC) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Old Harbor Hydroelectric Project (Old Harbor Project or project) to be located on the East Fork of Mountain Creek (a Lagoon Creek tributary), near the town of Old Harbor, Kodiak Island Borough, Alaska. The project crosses federal lands of the Kodiak National Wildlife Refuge. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed run-of-river project would consist of an intake, penstock, powerhouse, tailrace and constructed channel, access road and trail, and transmission line. Power from this project would be used by the residents of the city of Old Harbor.

Intake

The intake would consist of a diversion/cut off weir with a height ranging from about 4 feet at the spillway to 6 feet elsewhere and having an overall length of approximately 100 feet. The creek bottom is close to bedrock so the base of the diversion wall would be a shallow grouted or concrete footing dug into the stream bed. The weir would not create any significant impoundment of water and would only be high enough to have an intake that pulls water from the midpoint of the water column. This would allow floatable objects and bottom moving sediments to remain in the creek. A water filtering system consisting of a trash rack, diversion gates, and secondary screens would be incorporated into the weir structure as a separate desanding box that would be partially exposed above grade. The project diversion and intake works would consist of concrete, or other suitable material, with an integral spillway. A below grade transition with an above ground air relief inlet pipe would convey water to a buried High Density Polyethylene Pipe (HDPE) pipeline.

Penstock

A 10,100-foot-long penstock consisting of an 18-inch-diameter HDPE pipe, a 20-inch-diameter HDPE pipe, and a 16-inch-diameter steel pipe would be installed. A total of 7,250 feet of HDPE would be installed from the intake and 2,850 feet of steel pipe would be installed near the powerhouse. The pipe would be buried 1 to 3 feet underground and follow the natural terrain as much as possible. The pipeline would be located such that bends would be gradual while minimizing the amount of excavation and fill needed.

Powerhouse

The powerhouse would consist of a 30-foot by 35-foot (approximate) by 16-foot- high metal building or similar structure. The building would house the turbines and associated equipment, switchgear, controls, and tools and would be placed on a fill pad. The power generation equipment would consist of two Pelton 262 kilowatt (kW) units with a 480-volt, 3-phase synchronous generator and switchgear for each unit. Each unit would have a hydraulic capacity of 5.9 cubic feet per second (cfs) for a total project peak flow rate of 11.8 cfs capable of producing 525 kW of power. A bypass flow system for maintaining environmental flows is not proposed at this time, since the source creek runs dry during certain times of the year.

Tailrace

A tailrace structure and constructed channel would convey the project flows approximately 700 feet from the powerhouse to the nearby lake, known in the city of Old Harbor as the Swimming Pond. A culvert would contain some of the tailrace near the powerhouse to allow for vehicle travel over the tailrace. The constructed channel would convey project flows 1,100 feet from the Swimming Pond to the headwaters of the Lagoon Creek tributary.

Access Road and Trail

An approximately 11, 200-foot-long intake access trail would run between the intake and the powerhouse following the penstock route. The 12-foot-wide trail would be made of 1 to 2 feet of rock fill placed over a geo-textile filter fabric. Two gates would be placed along on the access trail to block the public from accessing the Kodiak National Wildlife Refuge on all terrain vehicles. One gate would be located at the powerhouse. Another gate would be placed where an existing trail connects to the new trail at about 7,000 feet northwest of the powerhouse. A new 6,800-foot-long by 24-foot-wide powerhouse access road would extend from powerhouse to the existing community drinking water tank access road. The road would be open to the public.

Transmission Line

A 6,800-foot-long (1.5-mile), 7.2-kV, 3-phase overhead power line would be installed from the powerhouse to the existing power distribution system in Old Harbor. The transmission line would follow the powerhouse access road and drinking water tank road alignment.

The estimated dependable capacity of the project is 140 kW. The peak installed capacity will primarily depend on economics and the projected increase in demand. AVEC has chosen to permit the project with a peak capacity of 525 kW.

Applicant Contact: Brent Petrie; Manager, Community Development and Key Accounts; Alaska Village Electric Cooperative; 4831 Eagle Street,

Anchorage, Alaska 99503–7497; (907) 565–5358 or email at *bpetrie@avec.org.*

FERC Contact: Carolyn Templeton; (202) 502–8785 or *carolyn.templeton@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13272) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4013 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at PJM Interconnection, L.L.C. Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and Commission staff may attend upcoming PJM Interconnection, L.L.C. (PJM) Members Committee meetings, as well as other PJM committee, subcommittee or task force meetings.[1] The Commission and Commission staff may attend the following meetings:

PJM Members Committee

- February 21, 2012 (Conference Call)
- February 23, 2012 (Wilmington, DE)
- March 26, 2012 (Conference Call)
- March 29, 2012 (Wilmington, DE)
- April 23, 2012 (Conference Call)
- April 26, 2012 (Wilmington, DE)
- May 17, 2012 (Cleveland, OH)
- June 25, 2012 (Conference Call)
- June 28, 2012 (Wilmington, DE)
- July 23, 2012 (Conference Call)
- July 26, 2012 (Wilmington, DE)
- September 24, 2012 (Conference Call)
- September 27, 2012 (Wilmington, DE)
- October 18, 2012 (Conference Call)
- October 25, 2012 (Wilmington, DE)
- November 26, 2012 (Conference Call)
- November 29, 2012 (Wilmington, DE)

PJM Markets and Reliability Committee

- February 23, 2012 (Wilmington, DE)
- March 29, 2012 (Wilmington, DE)
- April 26, 2012 (Wilmington, DE)
- June 28, 2012 (Wilmington, DE)
- July 26, 2012 (Wilmington, DE)
- September 27, 2012 (Wilmington, DE)
- October 25, 2012 (Wilmington, DE)
- November 29, 2012 (Wilmington, DE)

PJM Market Implementation Committee

- February 17, 2012 (Wilmington, DE)
- March 14, 2012 (Wilmington, DE)
- April 11, 2012 (Wilmington, DE)
- May 9, 2012 (To Be Determined)
- June 13, 2012 (To Be Determined)
- July 11, 2012 (To Be Determined)
- August 8, 2012 (To Be Determined)
- September 12, 2012 (To Be Determined)
- October 10, 2012 (To Be Determined)
- November 7, 2012 (To Be Determined)
- December 12, 2012 (To Be Determined)

The discussions at each of the meetings described above may address matters at issue in pending proceedings before the Commission, including the following currently pending proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket Nos. ER06–456, ER06–880, ER06–954, ER06–1271, EL07–57, ER07–424, ER07–1186, ER08–229, ER08–1065, ER09–497, and ER10–268, *PJM Interconnection, L.L.C.*

Docket No. ER07–1186, *PJM Interconnection, L.L.C.*

Docket No. EL08–47, *PJM Interconnection, L.L.C.*

Docket No. ER08–386, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket No. ER08–686, *Pepco Holdings, Inc.*

Docket No. ER09–1063, *PJM Interconnection, L.L.C.*

Docket No. ER09–1148, *PPL Electric Utilities Corporation*

Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket No. EL10–52, *Central Transmission, L.L.C. v. PJM Interconnection, L.L.C.*

Docket Nos. ER10–253 and EL10–14, *Primary Power, L.L.C.*

Docket No. ER11–2183, *American Electric Power Service Corporation*

Docket Nos. ER11–2814 and ER11–2815, *PJM Interconnection, L.L.C. and American Transmission Systems, Inc.*

Docket Nos. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*

Docket Nos. ER11–3972, *PJM Interconnection, L.L.C.*

Docket No. ER11–4106, *PJM Interconnection, L.L.C.*

Docket No. ER11–4402, *PJM Interconnection, L.L.C.*

Docket No. ER11–4628, *PJM Interconnection, L.L.C.*

Docket No. EL12–8, *DC Energy, L.L.C. and DC Energy Mid-Atlantic, L.L.C. vs. PJM Interconnection, L.L.C.*

Docket No. EL12–10, *PJM Interconnection, L.L.C.*

Docket No. EL12–19–000, *FirstEnergy Solutions Corporation and Allegheny Energy Supply Company, LLC, v. PJM Interconnection, L.L.C.*

Docket No. ER12–91, *PJM Interconnection, L.L.C.*

Docket No. ER12–92, *PJM Interconnection, L.L.C.*

Docket No. ER12–306, *Baltimore Gas and Electric Company*

Docket No. ER12–445, *PJM Interconnection, L.L.C.*

Docket No. ER12–469, *PJM Interconnection, L.L.C.*

Docket No. ER12–513, *PJM Interconnection, L.L.C.*

Docket No. ER12–525, *PJM Interconnection, L.L.C.*

Docket No. ER12–636, *PJM Interconnection, L.L.C.*

Docket No. ER12–718, *New York Independent System Operator, Inc.*

Docket No. ER12–759, *PJM Interconnection, L.L.C.*

For additional meeting information, see: *http://www.pjm.com/committees-*

[1] For example, PJM subcommittees and task forces of the standing committees (Operating, Planning and Market Implementation) and senior standing committees (Members and Markets and Reliability) meet on a variety of different topics; they convene and dissolve on an as-needed basis. Therefore, the Commission and Commission staff may monitor the various meetings posted on the PJM Web site.

and-groups.aspx and *http://www.pjm.com/Calendar.aspx*.

The meetings are open to stakeholders. For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov*.

Dated: February 15, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4074 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM11–9–000]

Locational Exchanges of Wholesale Electric Power; Notice Terminating Proceeding

1. On February 17, 2011, the Commission issued a Notice of Inquiry (NOI) concerning the regulatory treatment of locational exchanges of wholesale electric power. The Commission sought guidance as to the circumstances under which locational exchanges of wholesale electric power should be permitted generically and circumstances under which the Commission should consider locational exchanges of wholesale electric power on a case-by-case basis. The Commission received 17 comments from interested parties addressing various issues presented in the NOI. The Commission has determined that there is no basis for continuing this proceeding through the initiation of a rulemaking process and, instead, addresses related issues in an order issued contemporaneously with this order.[1] Therefore, the Commission is terminating this proceeding.

The Commission orders:

The Notice of Inquiry issued by the Commission in this proceeding is hereby terminated.

By direction of the Commission.

Issued: February 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4071 Filed 2–21–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 138 FERC ¶ 61,121 (2012).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9338–7]

Access to Confidential Business Information by Syracuse Research Corporation, Inc., and Its Identified Subcontractor, BeakerTree Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Syracuse Research Corporation (SRC), Inc., of North Syracuse, NY, and its identified subcontractor BeakerTree Corporation to access information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than February 29, 2012.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; email address: *moseley.pamela@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, 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 technical 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–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA contract number EP–W–12–003, contractor SRC, Inc., of 4225 Running Ridge Road, North Syracuse, NY; and BeakerTree Corporation of 13402 Birch Bark Court, Fairfax, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) by performing chemistry evaluation of new and existing chemicals including the chemistry aspects of their manufacture, processing, use, potential new uses, and pollution prevention. They will also assist in examining documents for information on chemical structures, manufacture, physical/chemical properties, production volume and other pertinent data used in the assessment of the potential effects of chemicals. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP–W–12–003, SRC and BeakerTree will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. SRC and BeakerTree personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA

may provide SRC and BeakerTree access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and SRC's site located in 2451 Crystal Drive, Suite 475, Arlington, VA, site, in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until January 12, 2017. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

SRC and BeakerTree personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: February 15, 2012.

Mario Caraballo,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–4067 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0234; FRL–9512–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Petroleum Refineries (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection and amendments to the collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 23, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0234, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Office of Compliance Assessment and Media Programs Division (Mail Code 2227A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0234, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Petroleum Refineries (Renewal).

ICR Numbers: EPA ICR Numbers 1692.07, OMB Control Number 2060–0340.

ICR Status: This ICR is scheduled to expire on February 29, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries (40 CFR part 63, subpart CC) were proposed on July 15, 1994, promulgated on August 18, 1995, and most recently amended on October 28, 2009. These regulations apply to the following existing and new petroleum refining process units and emission points located at refineries that are major sources of hazardous air pollutants (HAPs): Miscellaneous process vents, storage vessels, wastewater streams and treatment operations, equipment leaks, gasoline loading racks, and marine vessel loading operations. These regulations also apply to storage vessels and equipment leaks associated with bulk gasoline terminals or pipeline breakout stations that are related to an affected petroleum refinery. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart CC.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP. In addition,

respondents are required to comply with the recordkeeping and reporting requirements contained in the following rules: Either 40 CFR part 61, subpart VV or 40 CFR part 63, subpart H for equipment leaks (which includes an initial report and semiannual summaries of leak detection and repair); 40 CFR part 61, subpart FF for wastewater operations; portions of 40 CFR part 63, subpart R for gasoline loading racks; and 40 CFR part 63, subpart Y for marine tank vessel loading operations.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart CC, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 315 hours per response. "Burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum refineries plants.

Estimated Number of Respondents: 153.

Frequency of Response: Annually, semiannually, occasionally, and quarterly.

Estimated Total Annual Hour Burden: 511,064 hours.

Estimated Total Annual Costs: There are $62,671,642, which includes $60,288,291 in labor costs, $2,321,640 in annualized capital/startup costs, and $61,711 in operation and maintenance (O&M) costs.

Changes in the Estimates: The increase in labor burden and cost to industry compared to the most recently approved ICR is due to several considerations. Firstly, burden from the recent ICR amendments, including the monthly sampling program and reporting and recordkeeping requirements for heat exchange systems, are incorporated into the overall estimate for this renewal ICR. This resulted in an increase in labor hours, as well as capital/startup costs and operation and maintenance (O&M) costs. Secondly, labor rates are updated to be consistent with the most recent available data from the Bureau of Labor Statistics.

There is also an increase in burden hours and costs to the Agency. Similarly, this is due to a program change, as well as the most updated labor rates.

The combining of the previous ICR with EPA ICR number 2334.02, has attributed also to the increase in burden hours and costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–3983 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0803, FRL–9512–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Background Checks for Contractor Employees (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before March 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2011–0803 to, (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information (OEI) Docket, Mailcode 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Staci Ramrakha, Policy Training and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2017; email address: *ramrakha.staci@epa.gov.*

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 31, 2011, 76 FR 67182, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2011–0803, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then

key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Background Checks for Contractor Employees.

ICR numbers: EPA ICR No. 2159.05, OMB Control No. 2030–0043.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The EPA uses contractors to perform services throughout the nation with regard to environmental emergencies involving the release, or threatened release, of oil, radioactive materials, or hazardous chemicals that may potentially affect communities and the surrounding environment. The Agency may request contractors responding to any of these types of incidents to conduct background checks and apply Government-established suitability criteria in determining whether employees are acceptable to perform on given sites or on specific projects. In addition to emergency response contractors, EPA may require background checks for contractor personnel working in sensitive sites or sensitive projects. The background checks and application of the Government's suitability criteria must be completed prior to contract employee performance. The contractor shall maintain records associated with all background checks. Background checks cover citizenship or valid visa status, criminal convictions, weapons offenses, felony convictions, and parties prohibited from receiving federal contracts.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated on average to be one hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information: adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information: search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: EPA Contractor Employee Who Work at Sensitive Sites.

Estimated Number of Respondents: 1,000.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 1,000.

Estimated Total Annual Cost: $186,730 includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–4022 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0804, FRL–9512–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Drug Testing for Contract Employees (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before March 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2011–0804 to, (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information (OEI) Docket, Mailcode 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Staci Ramrakha, Policy Training and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2017; email address: *ramrakha.staci@epa.gov.*

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 31, 2011, 76 FR 67182, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2011–0804, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in

the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Drug Testing for Contract Employees.

ICR numbers: EPA ICR No. 2183.05, OMB Control No. 2030–0044.

ICR Status: This ICR is scheduled to expire on June 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The EPA uses contractors to perform services throughout the nation in response to environmental emergencies involving the release, or threatened release, of oil, radioactive materials or hazardous chemicals that may potentially affect communities and the surrounding environment. Releases may be accidental, deliberate, or may be caused by natural disasters. Contractors responding to any of these types of incidents may be responsible for testing their employees for the use of marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), and any other controlled substances. The testing for drugs must be completed prior to contract employee performance. The contractor shall maintain records associated with all drug tests.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated on average to be 2.25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: EPA contractor employees who work at sensitive sites.

Estimated Number of Respondents: 450.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 1012.5.

Estimated Total Annual Cost: $102,870 includes $0 annualized capital or O&M costs.

Changes in the Estimates: This ICR represents an increase from 450 hours to 1,012.5 hours from the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The difference is in the amount of time allocated for an employee to provide a sample. The previous estimate did not take into account time for the employee to travel to and from the testing lab. Market research indicates the average time for an employee to travel to and from a testing site and provide a sample is 1.5 hours versus the fifteen minutes previously estimated.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–3985 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0751, FRL–9511–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Final Authorization for Hazardous Waste Management Programs (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2011–0751, to (1) EPA, either online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, (mail code 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 21, 2011 (76 FR 58492), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2011–0751, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified

above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Final Authorization for Hazardous Waste Management Programs (Renewal) .

ICR numbers: EPA ICR No. 0969.09, OMB Control No. 2050–0041.

ICR Status: This ICR is scheduled to expire on February 29, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of § 3006 of RCRA.

A State with an approved program may voluntarily transfer program responsibilities to EPA by notifying EPA of the proposed transfer, as required by section 271.23. Further, EPA may withdraw a State's authorized program under section 271.23.

State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. In the event that the State is revising its program by adopting new Federal requirements, the State shall prepare and submit modified revisions of the program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority in accordance with section 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with section 271.21 and submit revised organizational charts as required under section 271.6, in accordance with section 271.21. These paperwork requirements are mandatory under § 3006(a). EPA will use the information submitted by the State in order to determine whether the State's program meets the statutory and regulatory requirements for authorization.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 399 hours per response. For a State developing and revising a base program under RCRA and conducting public participation activities, EPA estimates that the reporting burden, with no associated recordkeeping burden, averages 0 hours per respondent. EPA does not expect any States to develop a program application or to submit a base program application over the three year period covered in this ICR. The reporting burden includes the time for developing each program component, allowing for public approval, and subsequently modifying and submitting the program to EPA. For a State submitting a revised program to EPA, the reporting burden is estimated to be 1,009 hours per year, with no associated recordkeeping burden. For a State whose program is being withdrawn, the reporting burden is estimated to average 207 hours, with no associated recordkeeping burden. EPA, however, does not expect that any State program will be withdrawn during the next three years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States.

Estimated Number of Respondents: 58.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 19,968 hours.

Estimated Total Annual Cost: $680,790, which includes $680,790 annualized labor costs and $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–3981 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0750; FRL–9512–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 23, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2011–0750, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bryan Groce, Office of Resource

Conservation and Recovery, Materials Recovery and Waste Management Division, (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 308–8750; fax number: (703) 308–0514; email address: *groce.bryan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 21, 2011 (76 FR 58493), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2011–0750, which is available for online viewing at *www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the RCRA Docket is 202–566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System (Renewal).

ICR numbers: EPA ICR No. 0801.18, OMB Control No. 2050–0039.

ICR Status: This ICR is scheduled to expire on February 29, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR 0801.18 renews the existing information collection (ICR No. 0801.16) for a three-year extension, thereby superseding and replacing the existing ICR. This ICR covers recordkeeping and reporting activities for the hazardous waste manifest paper system, under the Resource Conservation and Recovery Act (RCRA). EPA's authority to require use of a manifest system stems primarily from RCRA 3002(a)(5) (also RCRA Sections 3003(a)(3) and 3004.) Regulations are found in 40 CFR part 262 (registrant organizations and generators), part 263 (transporters), and parts 264 and 265 Treatment, Storage, or Disposal Facility (TSDFs). The manifest lists the wastes that are being shipped and the treatment, storage, or disposal facility (TSDF) to which the wastes are bound. Generators, transporters, and TSDFs handling hazardous waste are required to complete the data requirements for manifests and other reports primarily to: (1) Track each shipment of hazardous waste from the generator to a designated facility; (2) provide information requirements sufficient to allow the use of a manifest in lieu of a Department of Transportation (DOT) shipping paper or bill of lading, thereby reducing the duplication of paperwork to the regulated community; (3) provide information to transporters and waste management facility workers on the hazardous nature of the waste; (4) inform emergency response teams of the waste's hazard in the event of an accident, spill, or leak; and (5) ensure that shipments of hazardous waste are managed properly and delivered to their designated facilities.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Registrant organizations (manifest printer registry), hazardous waste generators which ship hazardous waste off-site, hazardous waste transporters, and hazardous waste TSDFs (treatment, storage, disposal facilities).

Estimated Number of Respondents: 161,720.

Frequency of Response: Once (each shipment) .

Estimated Total Annual Hour Burden: 3,472,218.

Estimated Total Annual Cost: $105,221,281, which includes $102,154,527 labor costs, $974,463 annualized capital costs and $2,092,291 annualized Operations & Maintenance (O&M) costs.

Changes in the Estimates: There is a decrease of 270,904 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to adjustments to the entities affected by the respondent activities required for each information collection element discussed in the Information Collection Request supporting document. The number of entities affected decreased for this ICR renewal cycle.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–3980 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0052; FRL–9338–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture

(defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from January 16, 2012 to January 31, 2012, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before March 23, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0052, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or email. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in 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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an "existing" chemical or a "new" chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a "new chemical," while those that are on the TSCA Inventory are classified as an "existing chemical." For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for "test marketing" purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from January 16, 2012 to January 31, 2012, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—22 PMNS RECEIVED FROM 1/16/12 TO 1/31/12

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0150	01/13/2012	04/11/2012	Croda Inc.	(G) Additive for lubricating oils.	(G) Isosorbide diester.
P–12–0151	01/17/2012	04/15/2012	CBI	(S) Monomer for the synthesis of speciality polymer.	(G) Glycol substituted bicyclic olefin.
P–12–0152	01/17/2012	04/15/2012	CBI	(S) Monomer	(G) Ester substituted bicyclic olefin.
P–12–0153	01/17/2012	04/15/2012	CBI	(S) Polymer for architectural coatings.	(G) Acrylic copolymer.
P–12–0154	01/19/2012	04/17/2012	CBI	(G) Dispersion used in coatings.	(G) Alkyl alkaacrylate, polymer with alkyl acrylate, alkyl acrylate.
P–12–0155	01/19/2012	04/17/2012	CBI	(G) An ingredient used in a binder resin.	(G) Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-, homopolymer, pentaerythritol polyalkenoate-blocked.
P–12–0156	01/20/2012	04/18/2012	CBI	(S) Polymer for coatings, stains, lacquers.	(G) Water soluble modified linseed oil.
P–12–0157	01/20/2012	04/18/2012	CBI	(S) Polymer for architectural coatings.	(G) Acrylic copolymer.
P–12–0158	01/20/2012	04/18/2012	Huntsman Corporation	(S) Exhaust dyeing of polyester.	(G) Aromatic diazo compound.
P–12–0159	01/20/2012	04/18/2012	Huntsman Corporation	(S) Exhaust dyeing of polyester.	(G) Aromatic diazo compound.
P–12–0160	01/23/2012	04/21/2012	CBI	(S) Fragrance ingredient	(S) Cyclopentanone, 2-(3,7-dimethyl-2,6-nonadien-1-yl)-.
P–12–0161	01/23/2012	04/21/2012	CBI	(G) Resin used in production of synthetic leather.	(G) MDI modified polyester with 1,4 butanediol, iso-pr alc.-blocked.
P–12–0162	01/24/2012	04/22/2012	CBI	(G) Chemical intermediate.	(G) Heteroacromatic compound.
P–12–0163	01/24/2012	04/22/2012	Huntsman Corporation	(S) Exhaust dyeing of cellulosic fabrics.	(G) Organoazo cuprate sulfate sodium salts.
P–12–0164	01/24/2012	04/22/2012	Huntsman Corporation	(S) Exhaust dyeing of polyester.	(G) Aromatic diazo compound.
P–12–0165	01/25/2012	04/23/2012	CBI	(G) Papermaking chemical.	(G) Modified *N*-vinylformamide polymer.

TABLE I—22 PMNs RECEIVED FROM 1/16/12 TO 1/31/12—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P–12–0166	01/24/2012	04/22/2012	CBI	(G) Component in ink for writing instruments.	(G) 1,2,3-propanetriol, homopolymer with cyclic ether.
P–12–0167	01/24/2012	04/22/2012	Dakota Gasification Company.	(S) dispersive dye for finishing polyster fibers.	(S) Tar, brown-coal.
P–12–0168	01/25/2012	04/23/2012	CBI	(G) Additive in e&e parts.	(G) Triazine derivative of melamine.
P–12–0169	01/26/2012	04/24/2012	CBI	(S) Substrate wetting and levelling agent for organic solvent-based paints and inks.	(G) Fluoro-modified acrylic copolymer.
P–12–0170	01/27/2012	04/25/2012	CBI	(G) Thermoplastic binder	(G) Styrene acrylate polymer.
P–12–0171	01/30/2012	04/28/2012	CBI	(G) Pigment dispersant	(G) Alkyl acrylate, polymer with alkyl phenylalkoxy-piperidinone and alkenylpyridine.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—14 NOCs RECEIVED FROM 1/16/12 TO 1/31/12

Case No.	Received date	Commencement notice end date	Chemical
P–05–0412	01/19/2012	12/30/2011	(S) Poly(oxy-1,4-butanediyl), .alpha.-[[(9-oxo-9h-thioxanthenyl)oxy]acetyl]-.omega.-[[[(9-oxo-9h-thioxanthenyl)oxy]acetyl]oxy]-
P–10–0246	01/17/2012	11/27/2011	(S) Nanotube, carbon
P–11–0325	01/31/2012	01/25/2012	(G) Beta alumina powder
P–11–0348	01/31/2012	01/17/2012	(G) Sodium melt electrolyte
P–11–0405	01/25/2012	01/23/2012	(G) Poly(oxy-1,2-ethanediyl),,'-[alkenyl-1-ylimino]di-2, 1-ethanediyl]bis[-hydroxy-, *N*-[2-alkyloxy-, *N*-[2-alkyloxy)-1-(hydroxymethyl)ethyl] derivates, benzoates (salts)
P–11–0501	01/30/2012	01/26/2012	(G) Alkyldioic acid, polymer with alkyl acrylate, alkenearomatic, alkyldiol, hydroxyalkyl methacrylate, aromatic isocyanate, alkyl methacrylate and acrylic acid
P–11–0535	01/13/2012	12/23/2011	(G) Carboxy functional polydimethylsiloxane
P–11–0546	01/26/2012	11/23/2011	(S) Silicate (2-) hexafluoro-cesium
P–11–0613	01/16/2012	12/23/2011	(G) Vinyl polymer grafted alkyl methacrylate
P–11–0614	01/20/2012	12/23/2011	(G) Vinyl polymer grafted poly methacrylate
P–11–0625	01/17/2012	12/26/2011	(G) Hetericyclic methyl quinacridone
P–12–0004	01/19/2012	01/17/2012	(G) Substituted polymeric aromatic amine azo colorant
P–12–0006	01/30/2012	01/25/2012	(G) Alkyldioic acid, polymer with alkyldiol, aromatic isocyanate and alkyloxirane polymer with oxirane ether with alkyltrio(3:1)
P–12–0007	01/31/2012	01/27/2012	(G) Alkyldioic acid, polymer with alkyldiol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyldiyl)], aromatic isocyanate and alkyloxirane polymer with oxirane ether with alkyltrio(3:1)

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: February 13, 2012.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–4069 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1012; FRL–9338–5]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by HeiQ Materials AG, to conditionally register the pesticide product HeiQ AGS–20 containing a new

active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Jed Costanza, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0204; email address: *costanza.jed@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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–2009–1012. 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

II. Did EPA conditionally approve the application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of silver, which includes particles in the size range between 10 and 100 nm, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of HeiQ AGS–20 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment. The conditions of this registration can be reviewed in the docket (EPA–HQ–OPP–2009–1012) at *http://www.reg.gov.*

III. Conditional Approval Form

EPA issued a notice, published in the **Federal Register** of March 31, 2010, (75 FR 16109) (FRL–8806–9), which announced that the company, HeiQ Materials AG (on behalf of its agent/ Gaughn Consulting) located at 1369 Gwyndale Way, Lansdale, PA 19446, had submitted an application to register the pesticide product, HeiQ AGS–20, a product that would be used as an antimicrobial and preservative additive used to treat fibers, plastics, polymers, latex products and ceramics (EPA File Symbol 85249–R), containing the active ingredient silver, which includes particles in the size range between 1 and 100 nm) at 19.3%. HeiQ subsequently submitted a revised label limiting use to the treatment of fibers only. This active ingredient has not been included in any previously registered product.

Listed below is the application conditionally approved on December 1, 2012 for silver:

HeiQ AGS–20, the end use product, (EPA Registration Number 85249–1), an antimicrobial and preservative additive used to treat fibers.

List of Subjects

Environmental protection, Chemicals, Pests and pesticides.

Dated: February 9, 2012.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2012–3928 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9836–4]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Jolene Trujillo.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.). 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–1017. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. 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 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.

FOR FURTHER INFORMATION CONTACT: Jolene Trujillo, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0103; email address: *trujillo.jolene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 40 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Tables 1, 2, and 3 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue orders in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
004787–00060	Cheminova Fipronil Technical	Fipronil.
005481–00279	PCNB 75% Wettable Powder	Pentachloronitrobenzene.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Chemical name
005481–00419	PCNB 75W Turf and Ornamental Soil Fungicide	Pentachloronitrobenzene.
005481–00438	80% PCNB	Pentachloronitrobenzene.
005481–00441	PCNB 75 DG	Pentachloronitrobenzene.
005481–00453	PCNB 75 WSP	Pentachloronitrobenzene.
005481–00457	Turfpro WSP Turf & Ornamental Soil Fungicide	Pentachloronitrobenzene.
005481–08981	Terraclor 75% Wettable Powder	Pentachloronitrobenzene.
005481–08983	Terrachlor Technical	Pentachloronitrobenzene.
005481–08990	Terrachlor 90% Dust Concentrate	Pentachloronitrobenzene.
005481–08996	Terrazan PCNB Technical 99%	Pentachloronitrobenzene.
005481–08999	Terrachlor Technical 96	Pentachloronitrobenzene.
005481–09034	Gustafson Terrachlor 80% Dust Concentrate	Pentachloronitrobenzene.
005481–09036	RTU PCNB Seed Protectant	Pentachloronitrobenzene.
005481–09037	Gustafson Apron-Terrachlor Dust Seed Treatment	Pentachloronitrobenzene Metalaxyl.
005481–09038	Terra-Coat WP	Pentachloronitrobenzene.
005905–00497	5 lb. Dimethoate Systemic Insecticide	Dimethoate.
006836–00159	LFQ–30	Poly(oxy-1,2-ethanediyl (dimethylimino)-1,2-ethanediyl (dimethylimino) -1,2-ethanediyl dichloride).
009444–00170	CB–38–2 For Insect Control	Pyrethrins, Piperonyl Butoxide.
010807–00101	Repco-Tox Space Spray Insecticide	Resmethrin.
010807–00107	Fog Kill Oil Base Insecticide	Resmethrin.
010807–00110	Aqua-Kill Insecticide	Resmethrin.
028293–00160	Unicorn House and Carpet Spray 11	Phenothrin, Tetramethrin.
066222–00026	Pramitol 2.5% Liquid Vegetation Killer	Prometon.
067760–00107	Rhyme TC Termiticide/Insecticide	Fipronil.
082542–00019	Technical Propiconazole	Propiconazole.
082542–00020	Propiconazole 41.8% EC Fungicide	Propiconazole.
083851–00016	Amitide Imazapyr Technical 98%	Imazapyr.
086068–00001	Texcan Glyphosate Technical	Glyphosate.
086068–00002	Texcan 62% Glyphosate MUP	Glyphosate-isopropylammonium.

TABLE 2—REGISTRATIONS CONTAINING FENARIMOL WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
010163–00273	Rubigan E.C.	Fenarimol.
010163–00274	Rubigan A.S. Turf and Ornamental	Fenarimol.
010163–00275	Rubigan A.S.	Fenarimol.
010163–00276	Rubigan Technical	Fenarimol.
010163–00290	Riverdale Patchwork	Fenarimol.
010163–00302	Fenarimol Technical	Fenarimol.
OR030037	Rubigan E.C.	Fenarimol.

TABLE 3—REGISTRATIONS CONTAINING CHLORONEB WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
002217–00692	Gordon's Professional Turf Products Teremec SP Turf Fungicide.	Chloroneb.
009198–00182	Andersons Golf Products Fungicide V	Chloroneb.
009198–00204	Andersons Golf Products Fungicide IX.	Chloroneb, Thiophanate-methyl.

Table 4 of this unit includes the names and addresses of record for all registrants of the products in Tables 1, 2, and 3 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 4—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company number	Company name and address
2217	PBI/Gordon Corp., 1217 West 12th St., P.O. Box 014090, Kansas City, MO 64101.
4787	Cheminova A/S, Agent: Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209.
5481	Amvac Chemical Corporation, 4695 MacArthur Ct., Suite 1200, Newport Beach, CA 92660–1706.
5905	Helena Chemical Co., Agent Helena Products Group, 7664 Smythe Farm Rd., Memphis, TN 38120.

TABLE 4—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA company number	Company name and address
6836	Lonza Inc., 90 Boroline Rd., Allendale, NJ 07401.
9198	The Andersons Lawn Fertilizer Division Inc., 521 Illinois Ave., P.O. Box 119, Maumee, OH 43537.
9444	Waterbury Companies Inc., Agent: FMC Corporation, 1101 Penn. Ave. NW., Suite 325, Washington, DC 20004.
10163; OR030037.	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
10807	Amrep Inc., 990 Industrial Park Dr., Marietta, GA 30062.
28293	Phaeton Corporation, Agent: Registrations By Design Inc., P.O. Box 1019, Salem, VA 24153.
66222	Makhteshim-Agan of North America Inc., Agent: Pyxis Regulatory Consulting, Inc., 4110 136th St. NW., Gig Harbor, WA 98332.
67760	Cheminova, Inc., Agent: Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209.
82542	Source Dynamics LLC., 10039 E. Troon North Dr., Scottsdale, AZ 85262.
83851	Amitide, LLC, 21 Hubble, Irvine, CA 92618.
86068	Texcan Investments & Marketing Company Inc., Agent: Pyxis Regulatory Consulting, Inc., 4110 136th St., NW., Gig Harbor, WA 98332.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 4 of Unit II. have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Tables 1, 2, and 3 of Unit II., EPA will allow existing stocks provisions as follows:

A. Registrations Listed in Table 1 of Unit II

The Agency anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

B. Registrations Listed in Table 2 of Unit II

The effective date of cancellation of these products is July 31, 2013. The registrants will be allowed to sell and distribute existing stocks of products containing Fenarimol until July 31, 2013. Thereafter, registrants will be prohibited from selling or distributing these pesticide products, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant will be allowed to sell and distribute existing stocks through July 31, 2015. After this date, remaining existing stocks of products containing Fenarimol labeled for all uses, already in the hands of users may be used until exhausted, provided that such use complies with the EPA-approved label and labeling of the product.

C. Registrations Listed in Table 3 of Unit II. Except No. 002217–00692

The registrant will be allowed to sell and distribute existing stocks until December 31, 2013. Thereafter, registrants will be prohibited from selling or distributing these pesticide products, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

D. Registration No. 002217–00692

The effective date of cancellation of this product is December 31, 2013. The registrant may continue to sell or distribute existing stocks of chloroneb for one year from the date of the cancellation. Thereafter, registrants will be prohibited from selling or distributing this pesticide product, except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 8, 2012.

Michael Goodis,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–3798 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0848; FRL–9336–1]

Notice of Intent To Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 6(f)(2) of the Federal Insecticide. Fungicide and Rodenticide Act (FIFRA), EPA is printing this Notice of Intent to Suspend Drexel Basic Copper Sulfate Technical. This notice is issued by EPA pursuant to section 3(c)(2)(B) of FIFRA. The Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In Notice (DCI), which required the registrant of the affected pesticide product containing the pesticide active ingredient, Copper Compounds, to take appropriate steps to secure certain data, and following the registrant's failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registration of the affected product. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registration under section 3(c)(2)(B) of FIFRA.

DATES: The Notice of Intent To Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent To Suspend or on March 23, 2012 if the mailed Notice of Intent To Suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so, unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV explains what must be done to avoid suspension under this notice (i.e., how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Veronica Dutch, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8585; email address: *dutch.veronica@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, 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–2010–0848. 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. Registrant Issued Notice of Intent To Suspend Active Ingredient, Product Affected, and Date Issued

The Notice of Intent to Suspend was sent via the U.S. Postal Service (USPS), return receipt requested, to the registrant for the product listed in Table 1 of this unit.

TABLE 1—LIST OF PRODUCTS

Registrant affected	Active ingredient	EPA Registration No.	Product name	Date EPA issued notice of intent to suspend
Drexel Chemical Company	Copper Compounds	19713–72	Drexel Basic Copper Sulfate Technical.	February 8, 2012.

III. Basis for Issuance of Notice of Intent To Suspend; Requirement List

The registrant failed to submit the required data or information or to take other appropriate steps to secure the required data listed in Table 2 of this unit.

TABLE 2—LIST OF REQUIREMENTS

EPA Registration No.	Guideline No. as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend
19713–72	830.1550	Product identity and composition	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.1600	Description of materials used to produce the product.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.1620	Description of production process	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.1650	Description of formulation process	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.1670	Discussion of formation of impurities	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.1700	Preliminary analysis	12/14/2007	12/24/2007	8/20/2008	No data received.

TABLE 2—LIST OF REQUIREMENTS—Continued

EPA Registration No.	Guideline No. as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend
19713–72	830.1750	Certified limits	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.1800	Enforcement analytical method	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6302	Color	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6303	Physical state	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6304	Odor	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6313	Stability to normal and elevated temperatures, metals, and metal ions.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6314	Oxidizing or reducing action	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6315	Flammability	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6316	Explodability	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6317	Storage stability	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6319	Miscibility	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6320	Corrosion characteristics	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.6321	Dielectric breakdown voltage	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7000	pH	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7050	UV/Visible absorption	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7100	Viscosity	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7200	Melting point/melting range	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7220	Boiling point/Boiling range	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7300	Density/relative density	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7370	Dissociation constants in water	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7550	Partition coefficient (n-octanol/water) shake flask method.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7570	Partition coefficient (n-octanol/water), estimation by liquid chromatography.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7840	Water solubility: Column elution method, shake flask method.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7860	Water solubility, generator column method.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	830.7950	Vapor pressure	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	870.1100	Acute Oral Toxicity	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	870.1200	Acute dermal toxicity	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	870.1300	Acute inhalation toxicity	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	870.2400	Acute eye irritation	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	870.2500	Acute dermal irritation	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–72	870.2600	Skin sensitization	12/14/2007	12/24/2007	8/20/2008	No data received.

IV. How to avoid suspension under this notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent To Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this notice in the **Federal Register** (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to

Suspend by mail or publication of this notice, as set forth in the **DATES** section and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration by operation of law and, under such circumstances, the suspension of the registration for your affected product will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in the **DATES** section and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30-day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in the **DATES** section and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) Data Call-In notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2.—List of Requirements, in Unit II., for each product by submitting all required supporting data/information described in Table 2 of Unit. II. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail): Office of Pesticide Programs, Pesticide Re-evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product. The suspension of the registration of your company's product pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

V. Status of Products That Become Suspended

Your product will remain suspended until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this notice, including all supplemental registrants of the product listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registration for your product listed in Table 1 of Unit II is currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In Notice or section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In Notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT.**

VI. What is the Agency's authority for taking this action?

The Agency's authority for taking this action is contained in sections 3(c)(2)(B) and 6(f)(2) of FIFRA, 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 10, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–3930 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and

clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 23, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov* <*mailto:Cathy.Williams@fcc.gov*>.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0761.

Title: Section 79.1, Closed Captioning of Video Programming, CG Docket No. 05–231.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and Not-for-profit entities.

Number of Respondents and Responses: 12,609 respondents; 78,633 responses.

Estimated Time per Response: 15 minutes (0.25 hours) to 10 hours.

Frequency of Response: Annual and on-occasion reporting requirements; Third party Disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

Total Annual Burden: 198,049 hours.

Total Annual Cost: $35,505,816.00.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, "Informal Complaints and Inquiries." As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 "Informal Complaints and Inquiries," in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at <*http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html*>. The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: The Commission seeks to extend existing information collection requirements in its closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of "pre-rule" programming, be closed captioned. The existing collections include petitions by video programming owners, producers and distributors for exemptions from the closed captioning rules, responses by viewers, and replies; complaints by viewers alleging violations of the closed captioning rules, responses by video programming distributors, and recordkeeping in support of complaint responses; and making video programming distributor contact information available to viewers in phone directories, on the Commission's Web site and the Web sites of video programming distributors (if they have them), and in billing statements (to the extent video programming distributors issue them).

In addition, the Commission seeks to extend proposed information collection requirements. Specifically, on July 21, 2005, the Commission released *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking*, CG Docket No. 05–231, Notice of Proposed Rulemaking, FCC 05–142, published at 70 FR 56150 on September 26, 2005 (*Closed Captioning Notice of Proposed Rulemaking*), which sought comment on several issues pertaining to these closed captioning rules (47 CFR 79.1). The *Closed Captioning Notice of Proposed Rulemaking* sought comment, *inter alia*, on whether petitions for exemption from the closed captioning rules should be permitted (or required) to be filed electronically through the Commission's Electronic Comment Filing System, and whether video programming distributors should be required to submit compliance reports to the Commission in cases where the final required amount of captioning post phase-in (*e.g.*, pre-rule programming) is not 100 percent. These proposed information collection requirements remain pending.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–3965 Filed 2–21–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before March 23, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov mailto:PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0754.

Title: Children's Television Programming Report, FCC Form 398.

Form Number: FCC Form 398.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 1,962 respondents; 7,848 responses.

Estimated Time per Response: 12 hours.

Frequency of Response: Recordkeeping requirement; Quarterly reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 94,176 hours.

Total Annual Cost: $4,708,800.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Commercial television broadcast stations and Class A television broadcast stations are both required to file FCC Form 398. FCC Form 398 is a standardized form that:

(a) Provides a consistent format for reporting by all licensees, and

(b) Facilitates efforts by the public and the FCC to monitor compliance with the Children's Television Act.

These commercial television broadcast station licensees and the Class A television broadcast station licensees both use FCC Form 398:

(a) To identify the individual station, and

(b) To identify the children's educational and informational programs, which the station broadcasts on both the regularly scheduled and preempted core programming, to meet the station's obligation under the Children's Television Act of 1990 (CTA).

Each quarter, the licensee is required to place in its public inspection file a "Children's Television Programming Report" and to file the FCC Form 398 each quarter with the Commission. The licensee must also complete a "Preemption Report" for each preempted core program during the quarter. This "Preemption Report" requests information on the date of each preemption, if the program was rescheduled, the date and time the program was aired, and the reason for the preemption.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–4058 Filed 2–21–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 23, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0075.

Title: Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station, FCC Form 345.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions; Local or Tribal Government.

Number of Respondents and Responses: 1,700 respondents; 2,700 responses.

Estimated Time per Response: 0.084–1.25 hours.

Frequency of Response: Third party disclosure requirement and on occasion reporting requirement.

Total Annual Burden: 2,667 hours.

Total Annual Cost: $2,678,025.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 310 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: Filing of the FCC Form 345 is required when applying for authority for assignment of license or permit, or for consent to transfer of control of a corporate licensee or permittee for an FM or TV translator station, or low power TV station.

This collection also includes the third party disclosure requirement of 47 CFR 73.3580 (OMB approval was received for Section 73.3580 under OMB Control Number 3060–0031). 47 CFR 73.3580 requires local public notice in a newspaper of general circulation in the community in which the station is located or providing notice over the air of the filing of all applications for assignment of license/permit. This notice must be completed within 30 days of the tendering of the application. A copy of the newspaper notice or a record of the broadcast notice and the application must be placed in the public inspection file.

OMB Control Number: 3060–0113.

Type of Review: Extension of a currently approved collection.

Title: Broadcast EEO Program Report, FCC Form 396.

Form Number: FCC Form 396.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 2,000 respondents and 2,000 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: Renewal reporting requirement.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $300,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained under Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Broadcast Equal Employment Opportunity Program Report (FCC Form 396) is a device that is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with FCC's EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Low Power TV and International stations.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–4057 Filed 2–21–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 23, 2012.

ADDRESSES: You may submit comments, identified by *FR Y–14A/Q/M,* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper

performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Revision, Without Extension of the Following Report

Report title: Capital Assessments and Stress Testing information collection.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Frequency: Annually, Quarterly, and Monthly.

Reporters: Large banking organizations that meet an annual threshold of $50 billion or more in total consolidated assets (large Bank Holding Companies or large BHCs), as defined by the Capital Plan rule (12 CFR 225.8).[1]

Estimated annual reporting hours: FR Y–14A: Summary, 24,600 hours; Macro scenario, 930 hours; Counterparty credit risk (CCR), 2,292 hours; Basel III, 600 hours; and Regulatory capital instruments, 600 hours. FR Y–14 Q: Securities risk, 1,200 hours; Retail risk, 456,000 hours; Pre-provision net revenue (PPNR), 75,000 hours; Wholesale corporate loans, 6,720 hours; Wholesale commercial real estate (CRE) loans, 6,480 hours; Trading, private equity, and other fair value assets (Trading risk), 41,280 hours; Basel III, 1,800 hours; Regulatory capital instruments, 3,600 hours; and Operational risk, 3,360 hours. FR Y–14M: Retail 1st lien mortgage, 129,000 hours; Retail home equity, 123,840 hours; and Retail credit card, 77,400 hours.

Estimated average hours per response: FR Y–14A: Summary, 820 hours; Macro scenario, 31 hours; CCR, 382 hours; Basel III, 20 hours; and Regulatory capital instruments, 20 hours. FR Y–14Q: Securities risk, 10 hours; Retail risk, 3,800 hours; PPNR, 625 hours; Wholesale corporate loans, 60 hours; Wholesale CRE loans, 60 hours; Trading risk, 1,720 hours; Basel III, 20 hours; Regulatory capital instruments, 40 hours; and Operational risk, 28 hours. FR Y–14M: Retail 1st lien mortgage, 430 hours; Retail home equity, 430 hours; and Retail credit card, 430 hours.

Number of respondents: 30.

General description of report: The FR Y–14 series of reports are authorized by section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which requires the Federal Reserve to ensure that certain BHCs and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, such information may be afforded confidential treatment under exemption 8 of the Freedom of Information Act (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt disclosure under exemption 4 (5 U.S.C. 552(b)(4)). Such exemptions would be made on a case-by-case basis.

Abstract: The data collected through the current FR Y–14A/Q provides the Federal Reserve with the information and perspective needed to help ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The Comprehensive Capital Analysis and Review is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including continuous monitoring of BHCs' planning and management of liquidity and funding resources, and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed. Currently, respondents are required to complete and submit five filings each year: one annual FR Y–14A filing and four quarterly FR Y–14Q filings. Compliance with these information collections is mandatory.

The FR Y–14A collects annually BHCs' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios. At least one of the scenarios may include a market shock that the BHCs include in their trading and counterparty loss projections. The FR Y–14Q collects granular data on BHCs' various asset classes and PPNR for the reporting period, which are used to support supervisory stress test models and for continuous monitoring efforts, on a quarterly basis. These data are used to assess the capital adequacy of large BHCs using forward-looking projections of revenue and losses.

Under section 165 of the Dodd-Frank Act, the Federal Reserve is required to issue regulations relating to stress testing (DFAST) for certain BHCs and nonbank financial companies supervised by the Board. On January 5, 2012, the Board published rulemakings (77 FR 594) which would include new reporting requirements found in 12 CFR 252.134(a), 252.146(a), and 252.146(b) related to stress testing. The Federal Reserve anticipates that these new reporting requirements and the PRA burden associated with these requirements would be addressed in detail in a future FR Y–14 proposal.[2]

Current Actions: The Federal Reserve proposes revising the information collection, effective June 30, 2012, based on the need to expand the respondent panel, enhance data items previously collected, and implement new reporting schedules. The proposed revisions include the following:

[1] The Capital Plan rule applies to every top-tier large BHC. This asset threshold is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain BHCs.

[2] The proposed rules would implement the enhanced prudential standards required to be established under section 165 of the Dodd-Frank Act and the early remediation framework established under section 166 of the Act. The enhanced standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management, single-counterparty credit limits, DFAST requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability. The 2011 proposal implementing the FR Y–14A and Q acknowledged the impending publication of the DFAST reporting requirements under section 165 of the Dodd-Frank Act. That proposal included a statement noting that revisions to the quarterly and annual data collections, based on the enhanced standards rulemaking, would be incorporated into the FR Y–14A and Q information collection.

• Implementing a new monthly schedule, the FR Y–14M, which would collect data previously collected on several quarterly Retail Risk portfolio-level worksheets (into two loan-level only collections and one loan- and portfolio-level collection), and collecting detailed address matching data for the two loan-level collections;

• Revising the quarterly Wholesale Risk schedule (corporate loan data collection) by adding data items that would allow the Federal Reserve to derive an independent probability of default, expanding the scope of loans included in the collection by moving loans from the Commercial Real Estate (CRE) data collection to the corporate loan data collection, clarifying definitions of existing data items, and requesting additional detail about collateral securing a facility; Revising the quarterly Wholesale Risk schedule (CRE collection) by moving loans to the corporate loan data collection, adding a non-accrual data item, and modifying the loan status data item to include the number of days past due;

• Implementing a new quarterly Operational Risk schedule to gather data that would support supervisory stress test models to forecast the BHCs' operational loss levels under various macroeconomic conditions; and

• Expanding the respondent panel (for the FR Y–14 A/Q/M) to include large banking organizations that meet an asset threshold of $50 billion or more in total consolidated assets (large BHCs), as defined by the Capital Plan rule (12 CFR 225.8).

Draft files illustrating the proposed new schedules and instructions, and the proposed revisions to the current reporting schedules and instructions are available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm*.

FR Y–14Q and M (Quarterly and Monthly Collection)

Retail Risk Schedule (First Lien Closed-End 1–4 Family Residential Mortgages, Home Equity Residential Mortgage, and Credit Card Data Collections)

The Federal Reserve proposes increasing the frequency of reporting for three retail portfolios from quarterly to monthly (the proposed FR Y–14M). The current quarterly Retail Risk schedule collects data on several portfolio-level worksheets, including: one domestic closed-end first lien residential mortgage worksheet, two domestic home equity worksheets (domestic closed-end home equity loans and domestic home equity lines of credit), and two domestic credit card worksheets (domestic charge card and domestic small and medium size enterprise (SME) corporate cards). The portfolio-level data collected was highly segmented and provided substantial insight into BHCs' home equity, first lien residential, and credit card portfolios. However, given the micro- and macro-prudential importance of the portfolios and the benefit of more granular information to supervisory model development and risk assessment, the Federal Reserve proposes replacing these quarterly portfolio-level worksheets with the following new monthly collections:

• One loan-level collection for *Domestic First Lien Closed-End 1–4 Family Residential Mortgage* data,

• One loan-level collection for *Domestic Home Equity Residential Mortgage* data, and

• One account- and portfolio-level collection for *Domestic Credit Card* data.

For these new retail portfolio collections, the Federal Reserve proposes collecting month-end data on a monthly frequency. Currently, all of the retail risk worksheets collect monthly data on a quarterly frequency, even though the Capital Plan rule allows for the collection of data as frequently as needed. The proposed monthly data collection would improve the Federal Reserve's ability to perform its continuous risk monitoring function by providing more timely data. In a time of crisis or market downturn where risk characteristics could change in an unpredictable manner, monthly data collection would be especially valuable for these retail portfolios with relatively short credit cycles. (For example, a credit card account could go from current to charged-off within one quarter.) Collecting data on a quarterly frequency could hinder the ability of the Federal Reserve to respond to issues of immediate supervisory concern or to requests from policy makers. Furthermore, BHCs generally produce data and internal risk management reports for these portfolios monthly, and often provide similar data for supervisory purposes on a monthly basis. The Federal Reserve, at this time, does not propose requiring monthly reporting for the other retail portfolios with longer credit cycles, as the burden of reporting at the increased frequency currently outweighs the value of the additional data.

These collections would gather one record per loan. Due to the volume of data that would be collected, these data would not be gathered in Excel worksheets as in the previous quarterly data collection; rather file specifications would be provided to respondents in order to transmit the data, as appropriate.

The proposed *Domestic First Lien Closed-End 1–4 Family Residential Mortgage* collection would gather monthly detailed loan-level data and would capture the following loans:

• All loans in the active inventory as-of the last day of the month;

• All loans in the inventory that were transferred to another servicer during the month; and

• All loans in the inventory that were liquidated during the month.

The reported data items would include: Loan number, property information, loan amount, documentation information, loan-to-value and debt-to-income ratios, borrower information, bankruptcy or foreclosure status, and other detailed loan information.

The proposed *Domestic Home Equity Residential Mortgage* collection would gather monthly detailed loan-level data and would capture the following loans:

• All loans in the active inventory as-of the last day of the month;

• All loans in the inventory that were transferred to another servicer during the month; and

• All loans in the inventory that were liquidated during the month.

The reported data items would include: loan number; property information; loan, line, and appraisal amounts; loan documentation information; loan-to-value and debt-to-income ratios; borrower information; bankruptcy or foreclosure status; and other detailed loan information.

In order to match senior and junior lien residential mortgages on the same collateral, the Federal Reserve also proposes gathering additional information (loan number, property and mailing address information, liquidation status, original lien position, and census tract) on the residential mortgage loans reported in the *Domestic First Lien Closed-End 1–4 Family Residential Mortgage and Domestic Home Equity Residential Mortgage* collections. By matching senior and junior lien loans by property ID, the Federal Reserve would glean valuable insights into the level of risk of both credits, especially in cases where current (or performing) junior lien loans are behind delinquent first lien loans.

The proposed *Domestic Credit Card* collection would gather monthly detailed account-level data and new portfolio-level data. The account-level collection would capture detailed data regarding domestic credit cards: general

purpose credit cards [3], private label credit cards [4], business credit cards [5], and corporate credit cards.[6] The new portfolio-level data would capture key information about portfolio characteristics including information that is unlikely to be captured at the account-level. (For example, certain collection costs are not typically assigned at the account-level.) The portfolio-level data would be primarily relevant for pools of credit card loans rather than individual accounts. Like the other new retail collections, the proposed *Domestic Credit Card* collection would collect mandatory data. However, some data items that are not directly available would be permitted to be reported on a best effort basis. For example, if the BHCs do not use the data in the course of their risk management practices or otherwise generate or store the data, they would not be required to generate the data for this collection.

FR Y–14Q (Quarterly Collection)

Wholesale Risk Schedule (CRE and Corporate Loan Data Collections)

The current corporate loan collection gathers loan-level data that focuses on data stored in BHCs' systems of records, particularly their loan accounting systems. While the granular loan-level data provides additional insights into certain credit risk characteristics, the data items in the initial FR Y–14Q collection were not sufficient to evaluate all aspects of credit risk or produce an independent probability of default (PD). In order to better understand the credit risk associated with BHCs' corporate loan exposures, the Federal Reserve proposes adding approximately 35 data items to the collection. These data items would allow the Federal Reserve to derive an independent PD for both public and private firms and better track underwriting standards and emerging risks in BHCs' loan portfolios. To reduce the burden of reporting the additional data items, the Federal Reserve also proposes allowing BHCs to exclude from reporting (or make optional the reporting of) obligor financial data (data items 51–79) for loans extended to an obligor (1) Domiciled outside of the U.S.; (2) that is a natural person, a non-profit Federal, state or local governmental agency; or (3) that has a NAICS industry code [7] beginning with 52 (Finance and Insurance) or 5312 (Real Estate Agents and Brokers).

In addition, the Federal Reserve proposes amending the scope of loans in the corporate loan collection to include owner-occupied non-farm, non-residential (NFNR) CRE loans (reported on the FR Y–9C, Schedule HC–C 1.e(1)). These loans, currently reported in the CRE collection, would be moved to the corporate loan collection so overall this does not represent an expansion of the wholesale collection. The data items gathered in the corporate loan collection better capture the elements indicative of risk in owner-occupied NFNR CRE loans than those in the CRE collection. The Federal Reserve proposes revisions to the corporate loan data collection to clarify definitions of existing data items and request additional detail about collateral securing a facility.

The Federal Reserve also proposes revising the CRE data collection to add a non-accrual data item and to modify the loan status data item to include the number of days past due. These revisions to the CRE data collection would allow the Federal Reserve to better model the credit risk of CRE loans and these data would be readily available in BHCs' loan servicing systems.

Although no changes are being proposed to the reference in the instructions for the wholesale data collections regarding the use of the International Organization for Standardization country code list, the Federal Reserve solicits feedback regarding whether this reference should be changed to direct respondents to use U.S. Department of Treasury (Treasury) country code list instead. At present, the Treasury list is referenced in the instructions for the Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks (FR 2502q; OMB No. 7100–0079) and is used by institutions that submit data on the Treasury International Capital reporting forms and data on certain Federal Financial Institutions Examination Council (FFIEC) reporting forms.

Operational Risk Schedule

The current FR Y–14A *Operational Risk worksheets* (contained within the annual Summary schedule) collect BHCs' projections for operational losses. Additional detail is also collected on translating historical loss experience into operational loss projections and on budgeting processes used to project operational losses.

During the drafting of the September 2011 proposal implementing the FR Y–14A/Q, the Federal Reserve was aware of the need to also collect actual operational loss data on a quarterly basis; however, more time was needed in order to conduct a comprehensive analysis before determining the appropriate data items that would be collected. As part of that analysis, the Federal Reserve reviewed the reporting requirements in Schedule S (Operational Risk) of the interagency Advanced Capital Adequacy Framework Regulatory Reporting Requirements (FFIEC 101; OMB No. 7100–0319) to determine the data items collected and the level of granularity to which they are collected. The data collected on Schedule S is summary or aggregate-level information, while the proposed FR Y–14Q schedule requests data on an individual loss event level. Based on the analysis conducted, the Federal Reserve proposes a new quarterly operational loss data collection. The data collected would include the type of loss event, when it occurred, the loss amount, the business line in which it occurred, and other relevant information. Obtaining these data on an individual loss event level would help achieve key objectives that could otherwise not be effectively realized with summary level data only and would enhance the Federal Reserve's ability to (1) assess the BHCs' operational loss exposures in relation to the risks faced by the BHCs and (2) ensure safety and soundness. These data would also be used to develop and calibrate supervisory stress test models, evaluate the projections that BHCs submit as part of the FR Y–14A, and support continuous monitoring and analysis of BHCs operational loss activity and trends. These data are not currently available on a standardized basis.

[3] General purpose credit cards can be used at a wide variety of merchants, including any who accept MasterCard, Visa, American Express or Discover credit cards. Affinity and co-brand cards should be included in this category, and student cards if applicable. This credit card type includes loans reported on line 6.a of schedule HC–C of the Consolidated Financial Statements of Bank Holding Companies (FR Y–9C; OMB No. 7100–0128).

[4] Private label credit cards, also known as proprietary credit cards, are tied to the retailer issuing the card and can only be used in that retailer's stores. Oil & gas cards should be included in this loan type, and student cards if applicable. This credit card type includes loans reported on line 6.a of schedule HC–C of the FR Y–9C.

[5] Business credit cards include small business credit card accounts where the loan is underwritten with the sole proprietor or primary business owner as the applicant. This credit card type includes SME credit card loans that are reported on line 4.a of schedule HC–C of the FR Y–9C.

[6] Corporate credit cards are employer-sponsored credit cards for use by a company's employees. This credit card type includes US corporate credit card loans that are reported on line 4.a of schedule HC–C of the FR Y–9C.

[7] The North American Industry Classification System is used by business and government to classify business establishments according to type of economic activity (process of production) in Canada, Mexico, and the U.S.

Additional Request for Comment

Although no changes are being proposed to the submission due dates for the FR Y–14Q data, the Federal Reserve is soliciting feedback as to whether the quarterly submission schedule, which mirrors the FR Y–9 submission schedule, is problematic for institutions. The Federal Reserve specifically requests feedback as to whether additional time would be helpful, and if so, how many days.

FR Y–14 A, Q, and M (Annually, Quarterly, and Monthly Collections)

Respondent Panel Revisions

As mentioned above, the Capital Plan rule, which contains the authority for these reporting requirements, applies to large BHCs. As of September 30, 2011, there were approximately 34 large BHCs; however, at this time, only 30 are required to report. The asset threshold of $50 billion is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain BHCs. Therefore, the Federal Reserve proposes to expand the scope of the respondent panel required to complete the reporting schedules and worksheets to include all BHCs subject to the Capital Plan rule, except for SR 01–01 firms.[8]

Board of Governors of the Federal Reserve System, February 15, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–3964 Filed 2–21–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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 March 19, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *UTB Financial Holding Company, Dallas, Texas,* to become a bank holding company by acquiring 100 percent of United Texas Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, February 16, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–4018 Filed 2–21–12; 8:45 am]

BILLING CODE 6210–01–P

[8] SR 01–01 (Application of the Board's Capital Adequacy Guidelines to BHCs owned by Foreign Banking Organizations) states, "as a general matter, a U.S. BHC that is owned and controlled by a foreign bank that is a Financial Holding Company that the Board has determined to be well-capitalized and well-managed will not be required to comply with the Board's capital adequacy guidelines."

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (Eastern Time) February 27, 2012.

PLACE: 2nd Floor Training Room, 1250 H Street NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts will be closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the January 23, 2012 Board Member Meeting
2. Thrift Savings Plan Activity Report by the Executive Director
   a. Monthly Participant Activity Report
   b. Investment Performance Report
   c. Legislative Report
3. Review of Audit Recommendations
4. Audit Reports
5. Department of Labor Audit Presentation
6. Review and Evaluation of Investment Fund Indexes
7. Status of Current Investment Management Contract
8. Board Meeting Calendar Review
9. FRTIB Move Update
10. Roth Contribution Feature Update

Parts Closed to the Public

11. Procurement
12. Predecisional Matters

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 17, 2012.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–4248 Filed 2–17–12; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043; Docket 2012–0076; Sequence 2]

Federal Acquisition Regulation; Information Collection; Delivery Schedules

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning delivery schedules.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through

the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 23, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0043, Delivery Schedules by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0043, Delivery Schedules" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0043, Delivery Schedules". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0043, Delivery Schedules" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. Attn: Hada Flowers/IC 9000–0043, Delivery Schedules.

Instructions: Please submit comments only and cite Information Collection 9000–0043, Delivery Schedules, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Robinson, Procurement Analyst, Federal Acquisition Policy Division, GSA (202) 501–2568 or via email at *Anthony.robinson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule, for other than those for construction and architect-engineering, by inserting in solicitations and contracts a clause substantially the same as either FAR 52.211–8, Time of Delivery, or FAR 52.211–9, Desired and Required Time of Delivery. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Respondents: 3,440.
Responses per Respondent: 5.
Annual Responses: 17,200.
Hours per Response: .167.
Total Burden Hours: 2,872.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: February 14, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–4088 Filed 2–21–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0376; 30-day notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Generic Clearance for Communications Testing for Comprehensive Communication Campaign for HITECH Act—Revision—OMB No. 0990–0376—Office of the National Coordinator for Health Information Technology (ONC).

Abstract: As part of the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, ONC is proposing to conduct a nationwide communication campaign to meet the Congressional mandate to educate the public about privacy and security of electronically exchanged personal health information. ONC requires formative and process information about different segments of the public to conduct the campaign effectively. Data collection will occur continuously through the 24 months of the campaign and be used to inform campaign strategies, messages, materials and Web sites. Due to the growing use of mobile devices in exchanging personal health information electronically, ONC is proposing a revision of the currently approved collection to increase focus group burden hours and explore consumer attitudes and preferences regarding the communication of personal health information electronically using mobile devices. Additionally, an increase in burden hours is necessary to understand attitudes and preferences regarding how privacy and security information is presented to consumers electronically. ONC is collaborating with the HHS Office of Civil Rights to oversee the education and communication activities to build approval for HIT adoption and meaningful use, educate the public about privacy and security and increase participation in health information exchange.

Electronic health information exchange promises an array of potential benefits for individuals and the U.S. health care system through improved health care quality, safety, and efficiency. At the same time, this environment also poses new challenges and opportunities for protecting health information, including methods for individuals to engage with their health care providers and affect how their health information may be exchanged.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Focus Group	General Public	621	1	1.5	932
Focus Group screening	General Public	5,544	1	10/60	924
Web usability testing	General Public	144	1	1.5	216
Web usability screening	General Public	2,160	1	10/60	360
Self-Administered Surveys	General Public	2,000	1	15/60	500
Self-Administered survey screening.	General Public	8,000	1	10/60	1,333
Omnibus Surveys	General Public	2,000	1	10/60	333
Cognitive testing	General Public	25	1	2	50
Focus Group	Health Professional	288	1	1.5	432
Screening	Health Professional	4,320	1	10/60	720
Web usability testing	Health Professional	144	1	1.5	216
Screening	Health Professional	2,160	1	10/60	360
Self-Administered Surveys	Health Professional	2,000	1	15/60	500
Screening	Health Professional	8,000	1	10/60	1,333
Omnibus Surveys	Health Professional	2,000	1	10/60	333
In-Depth Interviews	Health Professional	100	1	45/60	75
Screening	Health Professional	1,000	1	10/60	167
Total (Overall)		40,506			8,784

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2012–4033 Filed 2–21–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Permanency Innovations Initiative Evaluation: Phase I.

OMB No.: New collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) intends to collect data for an evaluation of the Permanency Innovations Initiative (PII). This 5-year initiative, funded by the Children's Bureau (CB) within ACF, is intended to build the evidence base for innovative interventions that enhance well-being and improve permanency outcomes for particular groups of children and youth who are at risk for long-term foster care and who experience the most serious barriers to timely permanency.

Six grantees are funded to identify local barriers to permanent placement and implement innovative strategies that mitigate or eliminate those barriers and reduce the likelihood that children will remain in foster care for three years or longer. The first year of the initiative focused on clarifying grantees' target populations and intervention programs. In addition, evaluation plans were developed to support rigorous site-specific and cross-site studies to document the implementation and effectiveness of the grantees' projects and the initiative overall.

Data collection for the PII evaluation includes a number of components being launched at different points in time. The purpose of the current document is to request approval of data collection efforts needed for a first phase of data collection and to request a waiver for subsequent 60 day notices for later components of the evaluation. The first phase includes data collection for a cross-site implementation evaluation and site-specific evaluations of two PII grantees (Washoe County, Nevada, and the State of Kansas) that will begin implementing interventions during the second year of the PII grant period. The second phase includes a cost evaluation and site-specific evaluations of four PII grantees expected to implement interventions in the third year of the PII grant period.

Data for the evaluations will be collected through: (1) Direct assessment of caregivers; (2) service providers' clinical assessments of children and families; (3) interviews and focus groups with grantee staff during site visits and through telephone interviews; (4) web-based data collection from service providers and key informants; and (5) retrieval and submission of data from grantee data systems.

Respondents: Children and their parents or permanent or foster caregivers, caseworkers, supervisors, service providers, and key informants such as grantee project directors, data managers, and representatives of partner agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
CROSS-SITE IMPLEMENTATION STUDY				
Baseline Survey of Organization/System Readiness	60	1	.75	45
Implementation Drivers Web Survey	150	2.0	.75	225
Grantee Case Study Field Visit Discussion Guide	60	1	2.0	120
Fidelity Data (Implementation Quotient Tracker)	2	8	1.5	24

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Cross-site implementation study annual burden hours				414
KANSAS SITE-SPECIFIC EVALUATION				
Caregiver Initial Information Form	300	1	0.1	30
Child and Adolescent Functional Assessment Scale	300	2	1.0	600
Family Assessment Battery	300	.52	1.5	234
Caseworker interviews for NCFAS completion	45	54	0.5	1,215
Kansas annual burden hours				2,079
WASHOE COUNTY SITE-SPECIFIC EVALUATION				
Family Assessment Battery	249	1.33	1.5	497
Washoe annual burden hours				497

Estimated Total Annual Burden Hours: 2,990.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–4051 Filed 2–21–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Protection and Advocacy (P&A) Voting Access Application and Annual Report.

OMB No.: 0970–0326.

Description: This is a revision to include the application for the previously cleared Help America Vote Act (HAVA) Annual report.

An application is required by Federal statute (the Help America Vote Act (HAVA) of 2002, Public Law 107–252, Section 291, Payments for Protection and Advocacy Systems, 42 U.S.C. 15461). Each State Protection & Advocacy (P&A) System must prepare an application in accordance with the program announcement. There is no application kit; the P&As application may be in the format of its choice. It must, however, be signed by the P&As Executive Director or the designated representative, and contain the assurances as outlined under Part I. C. Use of Funds. The P&As designated representatives may signify their agreement with the conditions/assurances by signing and returning the assurance document Attachment B, found in Part IV of this Instruction. The assurance document signed by the Executive Director of the P&A, or other designated person, should be submitted with the application to the Administration on Developmental Disabilities.

An annual report is required by Federal statute (the Help America Vote Act (HAVA) of 2002, Public Law 107–252, Section 291, Payments for Protection and Advocacy Systems, 42 U.S.C. 15461). Each State Protection & Advocacy (P&A) System must prepare and submit an annual report at the end of every fiscal year. The report addresses the activities conducted with the funds provided during the year. The information from the annual report will be aggregated into an annual profile of how HAVA funds have been spent. The report will also provide an overview of the P&A goals and accomplishments and permit the Administration on Developmental Disabilities to track progress to monitor grant activities.

Respondents: Protection & Advocacy Systems—All States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, American Samoa, and Guam.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Protection and Advocacy (P&A) Voting Access Application	55	1	20	1,100

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Protection and Advocacy (P&A) Voting Access Annual Report	55	1	16	880

Estimated Total Annual Burden Hours: 1,980.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–3986 Filed 2–21–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Understanding the Dynamics of Disconnection from Employment and Assistance.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the "Understanding the Dynamics of Disconnection from Employment and Assistance" research project. The purpose of this study is to improve understanding of low-income individuals and families who are disconnected from employment and from public assistance and particularly those not receiving cash assistance through the Temporary Assistance for Needy Families (TANF) program. ACF is proposing to use a discussion guide to collect qualitative information from respondents who are low-income and disconnected from employment and public assistance. The guide will be used to interview respondents in order to learn about their experiences with disconnection. Topics will include recent employment and reasons for not working; use of public benefit programs and reasons for using or not using specific benefits; their financial circumstances and material well-being including the stability and sources of income, housing and living arrangements; their coping strategies for addressing their circumstances; and their views on potential pathways out of disconnectedness.

Respondents: Individuals who are low-income, disconnected from employment and public assistance, and living in low-income areas targeted by the study.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Discussion Guide	72	1	1.5	108

Estimated Total Annual Burden Hours: 108.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 14, 2012.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2012–3945 Filed 2–21–12; 8:45 am]

BILLING CODE 4184–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0585]

Stephen L. Marks: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Stephen L. Marks from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Mr. Marks was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. Mr. Marks was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Mr. Marks failed to respond. Mr. Marks' failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective February 22, 2012.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., rm. 4144, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act.

On June 23, 2011, the U.S. District Court for the Middle District of Pennsylvania entered judgment against Mr. Marks for: Conspiracy to distribute misbranded controlled substances in violation of 21 U.S.C. 846; causing the misbranding of a drug product by dispensing a prescription drug product without a valid prescription in violation of 21 U.S.C. 331(k) and aiding and abetting in a monetary transaction in criminally derived property of a value greater than $10,000 in violation of 18 U.S.C. 1957 and 2.

FDA's finding that debarment is appropriate is based on the felony convictions referenced herein for conduct relating to the regulation of a drug product. The factual basis for this conviction is as follows: Mr. Marks was a pharmacist licensed to practice as a pharmacist in Pennsylvania. Mr. Marks managed and operated Pharmacy Services, Inc. (PSI, Inc.), a pharmacy registered with the Drug Enforcement Administration. This registration permitted Mr. Marks to fill prescriptions for and dispense certain controlled substances. From on or about June 2004, through January 2006, Mr. Marks and other employees of PSI, Inc. dispensed and distributed controlled substances for businesses that used telemarketers and Web sites to market, sell, and distribute controlled substances, including pain medications and stimulants, to individuals throughout the United States. From on or about June 2004, through on or about January 2006, in the Middle District of Pennsylvania, with intent to defraud and mislead, Mr. Marks did an act that caused drugs to be misbranded after they moved in interstate commerce and while they were held for sale, in that he dispensed the prescription drugs hydrocodone and Didrex, both of which are Schedule III controlled substances, without a valid prescription of a practitioner licensed by law to administer such drugs.

As a result of his convictions, on September 30, 2011, FDA sent Mr. Marks a notice by certified mail proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Mr. Marks was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Mr. Marks an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. The proposal was received on October 6, 2011. Mr. Marks failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and has waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Stephen L. Marks has been convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Mr. Marks is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see sections 306(c)(1)(B), (c)(2)(A)(ii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(ii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Marks, in any capacity during Mr. Marks' debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Marks provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Marks during his period of debarment (section 306(c)(1)(A) of the FD&C Act (21 U.S.C. 335a(c)(1)(A))).

Any application by Mr. Marks for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. FDA–2011–N–0585 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 7, 2012.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2012–4064 Filed 2–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Final Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of final product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry, "Bioequivalence Recommendations for Specific Products," which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

DATES: Submit written or electronic comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the recommendations.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments on product-specific BE recommendations to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–8608.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products," which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/CDER/GUIDANCE/bioequivalence/default.htm*. As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, recommendations are posted on FDA's Web site and announced periodically in the **Federal Register.** The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register.** FDA considers any comments received and either publishes final recommendations or publishes revised draft recommendations for comment. Once finalized, the recommendations are posted on FDA's Web site and announced in the **Federal Register.** This notice announces final product-specific recommendations that were posted on FDA's Web site in October 2011.

For a complete history of previous **Federal Register** notices relating to product-specific BE recommendations, please go to *http://www.regulations.gov* and enter docket number FDA–2007–D–0369.

These guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidances represent the Agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Drug Products for Which Final Product-Specific BE Recommendations are Available

FDA is announcing final product-specific BE recommendations for drug products containing the following active ingredients:

A

Acetaminophen; Caffeine; Dihydrocodeine Bitartrate

C

Cephalexin
Ciprofloxacin

D

Desmopressin Acetate

E

Eletriptan HBr

F

Fenoprofen Calcium
Fludrocortisone Acetate

G

Glimepiride; Pioglitazone

H

Hydroxyzine Pamoate (multiple RLDs)

I

Imatinib Mesylate

L

Lansoprazole
Levetiracetam
Linezolid

M

Meprobamate
Methotrexate Sodium (multiple RLDs)
Methylprednisolone Acetate
Metoclopramide HCl

N

Nadolol
Nifedipine
Nilutamide
Nisoldipine
Nitazoxanide
Nitrofurantoin
Nitrofurantoin Macrocrystalline

O

Oxybutynin Chloride

P

Phendimetrazine Tartrate (multiple RLDs)
Phentermine HCl (multiple RLDs)
Phytonadione
Pregabalin
Propafenone HCl
Pyridostigmine Bromide

R

Raltegravir Potassium
Ramelteon

S

Scopolamine
Selegiline
Sorafenib Tosylate

T

Tamoxifen Citrate
Telbivudine
Temazepam
Terbinafine HCl
Toremifene Citrate

V

Voriconazole

Z

Zolpidem

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on any of the specific BE recommendations posted on FDA's Web site. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. The

guidance, notices, and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/CDER/GUIDANCE/bioequivalence/default.htm* or *http://www.regulations.gov.*

Dated: February 14, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4037 Filed 2–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Draft and Revised Draft Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products," which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this document were developed using the process described in that guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on these draft and revised draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft and revised draft product-specific BE recommendations listed in this notice by April 23, 2012.

ADDRESSES: Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance recommendations.

Submit electronic comments on the draft product-specific BE recommendations to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–8608.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products," which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on the FDA's Web site and announced periodically in the **Federal Register.** The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register.** FDA considers any comments received and either publishes final recommendations or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** of January 25, 2012 (77 FR 3777). This notice announces draft product-specific recommendations, either new or revised, that have been posted on the FDA's Web site in the period from July 1, 2011, through November 30, 2011.

For a complete history of previously published **Federal Register** notices relating to product-specific BE recommendations, please go to *http://www.regulations.gov* and enter docket number FDA–2007–D–0369.

These draft and revised draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidances represent the Agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

FDA is announcing new draft product-specific BE recommendations for drug products containing the following active ingredients:

C

Carbamazepine
Cholestyramine
Clindamycin HCl

D

Dinoprostone (multiple RLDs)

E

Enoxaparin
Ethinyl Estradiol Norethindrone
Etravirine

F

Fingolimod

I

Ibuprofen; Phenlyephrine HCl
Imiquimod

L

Lanthanum Carbonate
Loteprednol; Tobramycin

M

Methylphenidate HCl

P

Paliperidone Palmitate
Podofilox
Potassium Chloride (multiple RLDs)
Pyridostigmine Bromide

T

Testosterone

III. Drug Products for Which Revised Draft Product-Specific BE Recommendations Are Available

FDA is announcing revised draft product-specific BE recommendations for drug products containing the following active ingredients:

A

Alendronate Sodium
Alendronate Sodium; Cholecalciferol

B

Benzoyl Peroxide; Erythromycin (multiple RLDs)

M

Milnacipran HCl
Mupirocin Calcium

N

Niacin; Simvastatin

S

Sevelamer HCl

IV. Drug Products for Which Draft Product-Specific BE Recommendations Have Been Withdrawn

FDA is announcing the withdrawal of the product-specific BE recommendations for drug products containing the following ingredients: Acetaminophen; Propoxyphene Napsylate. FDA has requested that products containing propoxyphene be withdrawn from sale for reasons of safety or efficacy. The product-specific BE recommendations for Acetaminophen; Propoxyphene Napsylate that previously were published on the "Bioequivalence Recommendations for Specific Products" Web page have been deleted.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on any of the specific BE recommendations posted on FDA's Web site. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. The guidance, notices, and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 14, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4035 Filed 2–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Food and Drug Administration/Xavier University Global Medical Device Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) Cincinnati District, in cosponsorship with Xavier University, is announcing a public conference entitled "FDA/Xavier University Global Medical Device Conference." This 3-day public conference includes presentations from key FDA officials and industry experts, and has two separate tracks of interest. The conference is intended for companies of all sizes and employees at all levels.

Dates and Times: The public conference will be held on May 2, 2012, from 8:30 a.m. to 5 p.m.; May 3, 2012, from 8:30 a.m. to 5 p.m.; and May 4, 2012, from 8:30 a.m. to 1 p.m.

Location: The public conference will be held on the campus of Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073 or 513–745–3396.

Contact Persons: Gina Brackett, Food and Drug Administration, 6751 Steger Dr., Cincinnati, OH 45237, 513–679–2700, ext. 2167, FAX: 513–679–2771, email: *gina.brackett@fda.hhs.gov.*

For information regarding the conference and registration: Marla Phillips, Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073, email: *phillipsm4@xavier.edu.*

Registration: There is a registration fee. The conference registration fees cover the cost of the presentations, training materials, receptions, breakfasts, lunches, and dinners for the 3 days of the conference. Early registration ends March 6, 2012. Standard registration ends March 27, 2012. There will be onsite registration. The cost of registration is as follows:

TABLE 1—REGISTRATION FEES [1]

Attendee	Fee by March 6th	Fee by March 27th
Industry	$995	$1,295
Small Business (<100 employees).	800	900
Consultant	500	600
Academic	200	250
FDA/Government Employee.	Free	Free

[1] The following forms of payment will be accepted: American Express, Visa, Mastercard, and company checks.

To register online for the public conference, please visit the "Registration" link on the conference Web site at *http://www.XavierMedCon.com.* FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register.**

To register by mail, please send your name, title, firm name, address, telephone and fax numbers, email, and payment information for the fee to Xavier University, Attention: Sue Bensman, 3800 Victory Pkwy., Cincinnati, OH 45207. An email will be sent confirming your registration.

Attendees are responsible for their own accommodations. The conference headquarters hotel is the Downtown Cincinnati Hilton Netherlands Plaza, 35 West 5th St., Cincinnati, OH, 45202, 513–421–9100. Special conference block rates are available through April 11, 2012. To make reservations online, please visit the "Venue & Logistics" link at *http://www.XavierMedCon.com.*

If you need special accommodations due to a disability, please contact Marla Phillips (see *Contact Persons*) at least 7 days in advance of the conference.

SUPPLEMENTARY INFORMATION: The public conference helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The conference will provide those engaged in FDA-regulated medical devices (for humans) with information on the following topics:

- CDRH Medical Device Innovation Initiative Keynote Address;
- 510(k)—Office of Device Evaluation Perspective;
- The Purchasing Control Subsystem—Requirements and Implementation;
- Draft 510(k) Guidance—Deciding When to Submit a 510(k) for a Change or Modification;
- Challenges of Design Controls;
- FDA 483s and Regulatory Action—Response Workshop;

- Recalls—Globally;
- GHTF Document on CAPA—Workshop;
- 510(k)—An Industry Perspective;
- Interdependency of Postmarket Surveillance, Risk, and CAPA;
- Promotional Practices—Global;
- Office of Compliance Initiatives;
- U.S. Senate HELP Committee Keynote Dinner;
- Risk Management Across the Quality Systems—FDA Expectations and Implementation;
- Global Regulatory Strategy; and
- FDA Inspectional Approach—Panel With Current FDA Investigators.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) by providing outreach activities by Government Agencies to small businesses.

Dated: February 15, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4036 Filed 2–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0093]

Training Program for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research (CDER) is announcing the continuation of the Regulatory Project Management Site Tours and Regulatory Interaction Program (the Site Tours Program). The purpose of this document is to invite pharmaceutical companies interested in participating in this program to contact CDER.

DATES: Pharmaceutical companies may submit proposed agendas to the Agency by April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Dan Brum, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4160, Silver Spring, MD 20993–0002, 301–796–0578, email: *dan.brum@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management staff. CDER seeks to significantly enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing its training program to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide the following: (1) Firsthand exposure to industry's drug development processes and (2) a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. The Site Tours Program

In this program, over a 2- to 3-day period, small groups (five or less) of regulatory project managers, including a senior level regulatory project manager, can observe operations of pharmaceutical manufacturing and/or packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. Neither this tour nor any part of the program is intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but is meant rather to improve mutual understanding and to provide an avenue for open dialogue. During the Site Tours Program, regulatory project managers will also participate in daily workshops with their industry counterparts, focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, tracking mechanisms, and regulatory submission operations. The overall benefit to regulatory project managers will be exposure to project management, team techniques, and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the site tours will be the responsibility of CDER; therefore, selection will be based on the availability of funds and resources for each fiscal year. Selection will also be based on firms having a favorable facility status as determined by FDA's Office of Regulatory Affairs District Offices in the firms' respective regions. Firms interested in offering a site tour or learning more about this training opportunity should respond by submitting a proposed agenda to Dan Brum (see **DATES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: February 14, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4034 Filed 2–21–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Cardiothoracic Surgery Program.

Date: March 12, 2012.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Translational Programs in Lung Diseases.

Date: March 14–15, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Computer Generated Diet and Exercise Reminders Promoting, Cardiovascular Health.

Date: March 14, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 15, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4109 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Mechanisms of Antimicrobial Resistance Overflow.

Date: March 1–2, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

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.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: March 9, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Seattle Westin, 1900 5th Avenue, Seattle, WA 98101.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@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: February 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4101 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Institute of Dental and Craniofacial Research Special Emphasis Panel; RFA DE12–004 & 005 Functional Restoration of Salivary Glands.

Date: March 8, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly St., Bethesda, MD 20814.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer Scientific Review Branch, National Institute of Dental and Craniofacial, Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4098 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research 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 Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of RFA DE 12–006 and –007 Oral Diseases in Medically Compromised Patients (R21, R01).

Date: March 13, 2012.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jonathan Horsford, Ph.D., Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Insitutes

of Health, 6701 Democracy Blvd., Room 664, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4110 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; Research Resource for CAM Clinical Trials.

Date: March 15, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Hungyi Shau, Ph.D., Scientific Review Officer, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: February 15, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4107 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel: Genetic and Lifestyle Factors and Risk of Gastrointestinal Bleeding.

Date: March 30, 2012.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call),

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 15, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4105 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: April 10–11, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–3938, *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4104 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Institute of Dental and Craniofacial Research Special

Emphasis Panel; Collaborative Research on the Transition from Acute to Chronic Pain.

Date: March 12, 2012.

Time: 8 a.m. to 5:30 p.m.

Agendo: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4103 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 Institute of General Medical Sciences Special Emphasis Panel; Review of IRACDA Grant Applications.

Date: March 13, 2012.

Time: 8 a.m. to 5 p.m.

Agendo: To review and evaluate grant applications.

Ploce: Hilton Garden Inn Washington D.C./ Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contoct Person: Arthur L. Zachary, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12+, Bethesda, MD 20892–6200, 301–594–2886, *zochory@nigms.nih.gov.*

Catalogue of Federal Domestic Assistanve Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 14, 2012.

Jennifer Spaeth,

Director, Office of Federol Advisory Committee Policy.

[FR Doc. 2012–4102 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Cooperative Study Group for Autoimmune Disease Prevention (UO1).

Date: March 12–13, 2012.

Time: 8 a.m. to 5 p.m.

Agendo: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Andrea L. Wurster, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3259, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–761; 301–451–2660, *wurstera@moil.nih.gov.*

Nome of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Predictive Biodosimetry: Discovery and Development of Biomarkers for Acute and Delayed Radiation Injuries.

Dote: March 15–16, 2012.

Time: 8 a.m. to 5 p.m.

Agendo: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contoct Person: Maja Maric, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Room 3266, Bethesda, MD 20892–7616, 301–451–2634, *majo.moric@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "PAR–10–271, NIAID Investigator Initiated Program Project Applications (P01)."

Dote: March 22, 2012.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Sujata Vijih, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 14, 2012.

Jennifer S. Spaeth,

Director, Office of Federol Advisory Committee Policy.

[FR Doc. 2012–4099 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 Institute of General Medical Sciences Special Emphasis Panel; SCORE.

Dote: March 13, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Ploce: Hilton Garden Inn Washington DC/ Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Robert Horowits, Ph.D., Senior Investigator, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18,

Bethesda, MD 20892–6200, 301–594–6904, *horowitr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 14, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4097 Filed 2–21–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1178]

Revision of the National Preparedness for Response Exercise Program (PREP) Guidelines

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: The National Preparedness for Response Exercise Program (PREP) is designed to facilitate the periodic testing of oil spill response plans of certain vessels and facilities. The Coast Guard, Environmental Protection Agency (EPA), Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), and Department of the Interior's Bureau of Safety and Environmental Enforcement (BSEE) are working to revise the PREP Guidelines to reflect changes to regulations, agency reorganizations, and lessons learned from past preparedness activities and recent response activities. The PREP Guidelines were last revised in 2002. This notice solicits comments and suggestions for updating the PREP Guidelines.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 23, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1178 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LTJG Nicole Tourot, Office of Incident Management and Preparedness, Oil and Hazardous Substances Division (CG–5332), U.S. Coast Guard Headquarters; telephone 202–372–2230, email *Nicole.J.Tourot@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in the revision of the PREP Guidelines by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number (USCG–2011–1178), indicate the specific section of the PREP Guidelines to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. Insert "USCG–2011–1178" in the "Keyword" box, click "Search," and then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov,* type "USCG–2011–1178" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act and system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public meeting: After considering public comments and developing a revised draft of the PREP Guidelines, we may hold one or more public meetings to discuss the draft. We will announce the time and place of any meetings by a later notice in the **Federal Register**.

Basis and Purpose

The Oil Pollution Act of 1990 (OPA 90) requires, among other things, that periodic exercises take place to test oil spill removal capabilities in certain areas designated in the statute.[1] The National Preparedness for Response Exercise Program (PREP) was developed to establish a workable exercise program consistent with this statutory requirement. The PREP is a voluntary program developed to provide a mechanism for compliance with the exercise requirements, while being economically feasible for the government and oil industry to adopt and sustain. The PREP is a unified Federal effort and satisfies the exercise requirements of the Coast Guard (USCG), the Environmental Protection

[1] 33 U.S.C. 1321(j)(6) and (7).

Agency (EPA), the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Bureau of Safety and Environmental Enforcement (BSEE). Completion of the PREP exercises will satisfy all OPA 90 mandated Federal oil pollution response exercise requirements.

The four Federal agencies referenced above published the PREP Guidelines in 1994 and revised them in 2002. The 2002 edition is available in the docket as described in the **ADDRESSES** section above. The agencies are now considering revising the PREP Guidelines again in order to reflect agency reorganizations, preparedness and response lessons learned, and new regulations, including the Coast Guard's Salvage and Marine Firefighting regulations. We invite public comment on what changes, if any, should be made to update or improve the PREP Guidelines.

This notice is part of a two-stage public comment process. The comments received from the public on what, if any, suggested changes would be appropriate to the current version of the PREP Guidelines will be used to inform the revision process. After considering all of the comments, we anticipate making a revised draft of the PREP Guidelines available for public review and comment in the future.

This notice is issued under authority of 33 U.S.C. 1321(j), 5 U.S.C. 552(a), and 33 CFR 1.05–1.

Dated: February 9, 2012.

J.G. Lantz,

Director, Commercial Regulations and Standards U.S. Coast Guard.

[FR Doc. 2012–4021 Filed 2–21–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5509–FA–01]

Announcement of Funding Awards for the Capacity Building for Sustainable Communities Program for Fiscal Year 2011

AGENCY: Office of Sustainable Housing and Communities, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2011 (FY 2011) Notice of Funding Availability (NOFA) for the Community Challenge Planning Grant Program (Challenge Grants). This announcement contains the consolidated names and addresses of this year's award recipients.

FOR FURTHER INFORMATION CONTACT: Dwayne S. Marsh, Office of Sustainable Housing and Communities, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–4500, telephone (202) 402–6316. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Capacity Building for Sustainable Communities Program identifies intermediary organizations that can provide capacity building support for communities engaged in planning efforts that support community involvement and integrate housing, land use, land cleanup and preparation for reuse, economic and workforce development, transportation, and infrastructure investments.

The first purpose of the Program is to assemble a collection of capacity building service providers to work directly with the FY2010 and FY2011 HUD Sustainable Communities Regional Planning and Community Challenge grant recipients, HUD Preferred Sustainability Status Communities, and EPA Sustainable Community Technical Assistance recipients and Brownfield Area Wide Planning grant recipients (collectively—Sustainable Communities Grantees), and enable them to fulfill their anticipated outcomes. HUD and other Partnership agencies will work regularly with all selected intermediary service providers to maintain a coordinated and leveraged delivery approach that ensures the maximum benefit to local governments, regions, and planning entities and partners engaged in the prescribed activities.

The second purpose of the Program is to build a national coalition and leadership network of the Sustainable Communities Grantees. The purpose of the network is to facilitate the exchange of successful strategies, lessons learned, emerging tools and public engagement strategies, and approaches for avoiding or minimizing pitfalls. HUD will work with the selected intermediaries to develop a robust evaluation component for the network.

The FY 2011 awards announced in this Notice were selected for funding in a competition posted on Grants.gov and HUD's Web site on June 7, 2011. Applications were scored and selected for funding based on the selection criteria in that NOFA. This notice announces the allocation total of $5.65 million for Capacity Building for Sustainable Communities grants, of which $650,000 was provided by the U.S. Environmental Protection Agency.

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 10 awards made under the competition in Appendix A to this document.

Dated: December 22, 2011.

Shelley Poticha,

Director, Office of Sustainable Housing and Communities.

Appendix A—Capacity Building for Sustainable Communities Grant Program Grant Awards from FY 2011 Notice of Funding Availability

Reconnecting America, 1707 L Street NW., Washington, DC	$900,000
NADO Research Foundation, 400 N. Capitol Street NW., Washington, DC	900,000
Coalition for Utah's Future/ Project 2000, dba Envision Utah, 254 South 600 East, Salt Lake City, UT	600,000
Institute for Sustainable Communities, 535 Stone Cutters Way, Montpelier, VT	1,000,000
Minnesota Housing Partnership, 2446 University Avenue West, Saint Paul, MN	550,000
PolicyLink, 1438 Webster Street, Oakland, CA	900.000
PlaceMatters, Inc., 1536 Wynkoop Street, Denver, CO	400,000
University of Louisville Research Foundation, Inc., Stevenson Hall Room, 521 Sponsored Programs Grants Administration, Louisville, KY	400,000
Total	5,650,000

[FR Doc. 2012–3943 Filed 2–21–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FF09D00000–123–FXGO1664091HCC05d]

Wildlife and Hunting Heritage Conservation Council Charter

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of renewal.

SUMMARY: Under the Federal Advisory Committee Act (FACA), following consultation with the General Services Administration, the Secretary of the

Interior and the Secretary of Agriculture have renewed the Wildlife and Hunting Heritage Conservation Council (Council) charter for 2 years.

DATES: The charter will be filed with the Senate and House of Representatives and the Library of Congress on March 8, 2012.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, U.S. Fish and Wildlife Service, (703) 358–2639.

SUPPLEMENTARY INFORMATION: The Council will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary of the Interior and the Secretary of Agriculture through the Fish and Wildlife Service. The Council will function solely as an advisory body. The Council's duties will consist of, but are not limited to, providing recommendations for:

(a) Implementing the *Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;*

(b) Increasing public awareness of and support for the Wildlife Restoration Program;

(c) Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;

(d) Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;

(e) Fostering communication and coordination among State, tribal, and Federal governments; industry; sportsmen and women who hunt and shoot; wildlife and habitat conservation and management organizations; and the public;

(f) Providing appropriate access to Federal lands for recreational shooting and hunting;

(g) Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and

(h) When requested by the Designated Federal Officer in consultation with the Council Chairman, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

The Council will consist of no more than 18 discretionary and 7 ex officio members. The Secretary of the Interior and the Secretary of Agriculture will appoint discretionary members for 3-year terms.

(a) Ex officio members:

(1) Director, Fish and Wildlife Service, or designated representative;

(2) Director, Bureau of Land Management, or designated representative;

(3) Director, National Park Service, or designated representative;

(4) Chief, U.S. Forest Service, or designated representative;

(5) Chief, Natural Resources Conservation Service, or designated representative;

(6) Administrator, Farm Service Agency, or designated representative; and

(7) Executive Director, Association of Fish and Wildlife Agencies.

(b) The remaining (discretionary) members will be selected from among the national interest groups listed below. These members must be senior-level representatives of their organizations and/or have the ability to represent their designated constituency.

(1) State fish and wildlife resource management agencies;

(2) Wildlife and habitat conservation/management organizations;

(3) Game bird hunting organizations;

(4) Waterfowl hunting organizations;

(5) Big game hunting organizations;

(6) Sportsmen and women community at large;

(7) Archery, hunting, and/or shooting sports industry;

(8) Hunting and shooting sports outreach and education organizations;

(9) Tourism, outfitter, and/or guide industries related to hunting and/or shooting sports;

(10) Tribal resource management organizations.

The Council will function solely as an advisory body and in compliance with provisions of the FACA (5 U.S.C. Appendix 2). This notice is published in accordance with section 9a(2) of the FACA. The certification of renewal is published below.

Certification: I hereby certify that the Wildlife and Hunting Heritage Conservation Council is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior and the Department of Agriculture in furtherance of the provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd), and Executive Order 13443, "Facilitation of Hunting Heritage and Wildlife Conservation."

Dated: January 11, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–4028 Filed 2–21–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[USGS–GX12LR000F60100]

Agency Information Collection Activities: Comment Request for the Nonferrous Metals Surveys (30 Forms)

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a revision of a currently approved information collection (1028–0053).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for the revision of the currently approved paperwork requirements for the *Nonferrous Metals Surveys.* This collection consists of 30 forms. The revision includes adding the following form: USGS Form 9–4128–A; and removing the following forms: USGS Form 9–4054–M and USGS Form 9–4061–A. This notice provides the public and other Federal agencies an opportunity to comment on the nature of this collection which is scheduled to expire on March 31, 2012.

DATES: Please submit your comments on or before March 23, 2012.

ADDRESSES: Please submit written comments on this ICR to the OMB Office of Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email to *oira_docket@omb.eop.gov* or fax at 202–395–5806; and reference Information Collection 1028–0053 in the subject line. Please also submit a copy of your comments to Shari Baloch, Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 807, Reston, VA 20192 (mail); 703–648–7174 (telephone); 703–648–7199 (fax); or *smbaloch@usgs.gov* (email); and reference Information Collection 1028–0053 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Carleen Kostick at 703–648–7940 (telephone); *ckostick@usgs.gov* (email); or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (Information Collection Review, Currently under Review).

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents use these forms to supply the USGS with domestic production and consumption data of nonferrous and related nonfuel mineral commodities, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbook, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

II. Data

OMB Control Number: 1028–0053.
Form Number: Various (30 forms).
Title: Nonferrous Metals Surveys.
Type of Request: Revision of a currently approved collection.
Affected Public: Private sector: U.S. nonfuel minerals producers and consumers of nonferrous and related metals.
Respondent Obligation: Voluntary.
Frequency of Collection: Monthly, quarterly, and annually.
Estimated Number of Annual Responses: 4,971.
Annual Burden Hours: 3,683 hours. We expect to receive 4,971 annual responses. We estimate an average of 20 minutes to 2 hours per response.
Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

On August 23, 2011, we published a **Federal Register** Notice (76 FR 52686) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on October 24, 2011. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at anytime. Although you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Officer: Shari Baloch 703–648–7174.

Dated February 15, 2012.

John H. DeYoung, Jr.,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2012–4038 Filed 2–21–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Coushatta Tribe of Louisiana—Alcoholic Beverage Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Coushatta Tribe of Louisiana Alcoholic Beverage Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Coushatta Tribe's Indian country. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within its reservation and at the same time will provide an important source of revenue and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Act is effective as of February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Chanda M. Joseph, Tribal Relations Specialist, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, TN 37214; Telephone (615) 564–6750; Fax (615) 564–6701; or De Springer, Office of Indian Services, 1849 C Street NW., MS/4513/MIB, Washington, DC 20240; Telephone (202) 513–7626; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Coushatta Tribal Council adopted the Ordinance, by Coushatta Tribe of Louisiana Tribal Council Resolution No. 2011–32, on March 30, 2011.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council duly adopted the Coushatta Tribe of Louisiana Alcoholic Beverage Control Ordinance on March 30, 2011.

Dated: February 13, 2012.

Larry Echo Hawk,

Assistant Secretary, Indian Affairs .

The Coushatta Tribe of Louisiana Alcoholic Beverage Control Ordinance reads as follows:

Section 1. Title

This Ordinance shall be known as the Coushatta Tribe of Louisiana Alcoholic Beverage Control Ordinance.

Section 2. Purpose

The purpose of this Ordinance is to authorize, regulate and control the possession, transportation, purchase, sale and serving of alcoholic beverages within the Indian Country of the Coushatta Tribe of Louisiana in accordance with federal law, the laws of the State of Louisiana and the laws of the Coushatta Tribe of Louisiana.

Section 3. Definitions

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcoholic beverage" means any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than one-half of one percent alcohol by volume, including malt, vinous, spirituous, alcoholic or intoxicating liquors, beer, porter, ale, stout fruit juices, cider, or wine.

(b) "Gaming Enterprise" includes all businesses whose employees are subject to licensing by the Coushatta Gaming Commission.

(c) "Indian Country" means the Coushatta Tribe of Louisiana's Indian country as that term is defined in 18 U.S.C. § 1151.

(d) "Liquors" means all distilled or rectified alcoholic spirits, brandy, whiskey, rum, gin, and all similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing, such as liquors, cordials, and similar compounds.

(e) "Malt" means beverages obtained by alcoholic fermentation of an infusion or by a brewing process or concoction of barley or other grain, malt, sugars, and hops in water, including among other things, ale, beer, stout, porter, and the like. Malt beverages are exclusive of all "liquors" whether they be defined as intoxicating or spirituous liquors, or as alcoholic, vinous, or malt liquors, or however otherwise defined as liquors, which are produced by distillation.

(f) "Sale" and "sell" means:

(i) Any exchange, barter, and traffic of alcoholic beverages; or

(ii) The selling of or supplying or distributing, by any means whatsoever, of alcoholic beverages; or

(iii) The serving, giving or distributing of alcoholic beverages, whether or not money is requested or paid in connection with such service, giving, or distribution, except that any of the above actions taken by a wholesaler of alcoholic beverages that is duly licensed by the State of Louisiana is not a "sale" and is not subject to licensure under this Ordinance.

(g) "Tribe" shall mean the Coushatta Tribe of Louisiana.

(h) "Tribal Council" shall mean the duly elected governing body of the Coushatta Tribe of Louisiana.

(i) "Wine" shall mean all beverages made from the fermentation of fruits, berries, or grapes, with or without added spirits, and shall include all sparkling wine, which means champagne and any other effervescent wine charged with carbon dioxide, whether artificially or as the result of secondary fermentation of the wine within the container; and still wine, which means any non-effervescent wine, including any fortified wine, vermouth, any artificial imitation wine, any compound sold as "still wine," and any fruit juice.

Section 4. General

The possession, transportation, purchase, and sale of alcoholic beverages shall be lawful within Indian Country, provided that such possession, transportation, purchase and sale are in conformity with the provisions of this Ordinance and the laws of the State of Louisiana.

Section 5. Tribal License or Permit Required

(a) No person shall sell any alcoholic beverage within Indian Country unless duly licensed to do so by the Tribe in accordance with the terms of this Ordinance and the laws of the State of Louisiana. Notwithstanding the foregoing, no license is required for the possession or service of alcoholic beverages at a private residence within Indian Country under this Ordinance provided that no money is requested or paid in connection with such service or possession. Such service or possession must in any event comply with the laws of the State of Louisiana.

(b) Notwithstanding subsection (a), if (1) the Tribe or its gaming enterprise seeks to sell alcoholic beverages within Indian Country and (2) the Tribe or its gaming enterprise, as the case may be, is or will be duly licensed by the State of Louisiana to sell alcoholic beverages, then the Tribe and/or its gaming enterprise may sell such beverages without applying for or obtaining a Tribal Alcoholic Beverage License.

Section 6. Tribal Alcoholic Beverage License; Requirements

No tribal license shall issue under this Ordinance except upon a sworn application filed with the Tribal Council containing a full and complete showing of the following:

(a) Satisfactory proof that the applicant is or will be duly licensed by the State of Louisiana;

(b) Satisfactory proof that the applicant is of good character and reputation and that the applicant is financially responsible;

(c) The description of the premises in which the alcoholic beverages are to be sold, and proof that the applicant is the owner of such premises, or lessee of such premises, or is otherwise entitled by law to use such premises, for at-least the term of the license;

(d) Agreement by the applicant to accept and abide by all conditions of the tribal license;

(e) Payment of a fee as prescribed by the Tribal Council;

(f) Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony; and

(g) Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where alcoholic beverages are to be sold for at least 30 days prior to consideration by the Tribal Council and that such notice has been published at least twice in such local newspaper serving the community that may be affected by the license as the Tribal Chairman or Secretary may authorize. The notice shall provide contact information for purposes of written comment by the public on the application and indicate the last date by which such written comments will be accepted by the Tribal Council. Contact information and a final comment date shall be provided to each applicant upon request. The Tribal Council will consider all such comments prior to holding a hearing on the application pursuant to this Ordinance.

Section 7. Hearing on Application for Tribal Alcoholic Beverage License

(a) All applications for a tribal alcoholic beverage license shall be considered by the Tribal Council in a session at which the applicant shall have the right to be present. The Tribal Council may also summon to the hearing any person(s) supporting or opposing the application who submitted written comments by the comment deadline. All applicants and any person summoned by the Tribal Council to attend the hearing shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application.

(b) Prior to conducting the hearing the Tribal Council may order a background investigation of the applicant or any of the individuals listed on the applicant's license application.

(c) After the hearing, the Tribal Council, by secret ballot, shall determine whether to grant or deny the application, based on:

(i) Whether the requirements of Section 6 of this Ordinance have been met; and

(ii) Whether the Tribal Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

(d) In the event that the applicant is a member of the Tribal Council, or a member of the immediate family of a Council member, such member shall not vote on the application or participate in the hearings as a Council member.

Section 8. Temporary License

(a) The Tribal Council or its designee may grant a temporary license for the sale of alcoholic beverages for a period not to exceed three (3) days to any person applying for the same in connection with a Tribal or community activity, provided that the application shall be made as provided by Sections 6 and 7 of this Ordinance, and that the conditions prescribed in Sections 9(b) through 9(j) of this Ordinance, as well as any other reasonable conditions as the Tribal Council may establish, shall be observed by the temporary licensee.

(b) Each temporary license issued shall specify the types of alcoholic beverages to be sold, as well as the specific place, dates and times when the permit is valid.

(c) A fee, established by the Tribal Council, will be assessed on applications for temporary licenses.

Section 9. Conditions of the Tribal License

Any tribal license issued under this Ordinance shall be subject to such reasonable conditions as the Tribal Council shall establish, including, but not limited to the following:

(a) A regular license shall be valid for a term of one year. A temporary license shall be valid for a period of not to exceed three days.

(b) The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

(c) The licensed premises shall be subject to patrol by the tribal Police Department, and such other law enforcement officials as may be authorized under tribal or federal law.

(d) The licensed premises shall be open to inspection by duly authorized tribal officials at all times during regular business hours.

(e) All sales of alcoholic beverages shall be for the personal use and consumption of the purchaser, and no resale of any alcoholic beverage is permitted, except that a licensed retailer of alcoholic beverages may purchase alcoholic beverages for resale within Indian Country.

(f) No person under the age permitted under the law of the State of Louisiana shall be sold, served, delivered, given or allowed to consume alcoholic beverages in the licensed premises.

(g) No alcoholic beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises, except in conformity with any applicable Tribal and/or Louisiana State rules limiting the hours and days on which alcoholic beverages may be sold, served, disposed of, delivered or given to any person. In no event shall the licensed premises operate or open earlier or operate or close later than is permitted by the laws of the State of Louisiana.

(h) No alcoholic beverage shall be sold within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the Tribe, or on any special days of observance as designated by the Tribal Council.

(i) The license shall at all times be posted in a prominent, noticeable place on the premises where alcoholic beverages are to be sold.

(j) All acts and transactions executed under authority of the tribal alcoholic beverage license shall be in conformity with this Ordinance, the terms of the Tribal license, and the laws of the State of Louisiana.

Section 10. License Not a Property Right

Notwithstanding any other provision of this Ordinance, a tribal alcoholic beverage license is a mere permit for a fixed duration of time. A tribal alcoholic beverage license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal alcoholic beverage license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

Section 11. Assignment or Transfer

No tribal license issued under this Ordinance shall be assigned or transferred without the written approval of the Tribal Council expressed by formal resolution.

Section 12. Revocation and Suspension

Any license issued hereunder may be suspended or revoked by the Tribal Council for the breach of any of the provisions of this Ordinance or of the tribal license upon hearing before the Tribal Council after 10 days' notice to the licensee. The decision of the Tribal Council shall be final.

Section 13. Assignment of Authority of Tribal Council

The Tribal Council may, at its discretion, assign part or all of its hearing and licensing authority under this Ordinance by formal resolution.

Section 14. Severability

If a court of competent jurisdiction invalidates any part of this Ordinance, all valid parts that are severable from the invalid part shall remain in effect. If a part of this Ordinance is invalid in one or more of its applications, that part shall remain in effect in all valid applications that are severable from the invalid applications.

Section 15. Sovereign Immunity

Nothing contained in this Ordinance is intended to nor does in any way limit, alter, restrict, or waive the Tribe's sovereign immunity.

Section 16. Effective Date

This Ordinance shall be effective on the date that the Secretary of the Interior certifies this Ordinance and it is published in the **Federal Register**.

[FR Doc. 2012–4029 Filed 2–21–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Kickapoo Traditional Tribe of Texas—First Amended Beer and Liquor Tax Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amendment to the Kickapoo Traditional Tribe of Texas' Beer and Liquor Tax Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Kickapoo Traditional Tribe of Texas' Reservation. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the Kickapoo Traditional Tribe of Texas' Reservation. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective as of March 23, 2012.

FOR FURTHER INFORMATION CONTACT: Suzanne Chaney, Community Services Officer, Southern Plains Regional Office, Bureau of Indian Affairs, P.O. Box 368, Anadarko, OK 73005, Phone: (405) 247–1537; Fax: (404) 247–9240; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; Telephone (202) 513–7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Kickapoo Traditional Tribe of Texas adopted this amendment to the Kickapoo Traditional Tribe of Texas' Beer and Liquor Tax Ordinance by Resolution No. 2011–892 on March 30, 2011.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Kickapoo Traditional Tribal Council duly adopted this amendment to the Kickapoo Traditional Tribe of Texas' Beer and Liquor Tax

Ordinance on by Resolution No. 2011–892 on March 30, 2011.

Dated: February 9, 2012.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

The First Amended Kickapoo Traditional Tribe of Texas' Beer and Liquor Tax Ordinance reads as follows:

Section 100. Enactment Clause

This Ordinance is enacted pursuant to Article VII Sections g, h, j, k and r of the constitution of the Kickapoo Traditional Tribe of Texas. Be it enacted by the Council of the Kickapoo Traditional Tribe of Texas ("KTTT"), the following Beer and Liquor Tax Ordinance.

Section 101. Title and Purpose

This Chapter shall be known as the Kickapoo Traditional Tribe of Texas Beer and Liquor Tax Ordinance. These laws are enacted to regulate the sale and distribution of liquor and beer products on all properties under the jurisdiction of the KTTT and to create the Kickapoo Tax Commission, which will be in charge of taxing beer and liquor sales to generate revenues so as to fund needed tribal programs and services.

Section 102. Definitions

Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

(1) "Tribe and/or Tribal and/or KTTT" shall mean the Kickapoo Traditional Tribe of Texas.

(2) "Tribal Council" shall mean the Kickapoo Traditional Tribe of Texas Tribal Council as constituted by Section 1 Articles III and V, respectively of the Constitution of the Kickapoo Traditional Tribe of Texas.

(3) "Commission" shall mean the Kickapoo Tax Commission.

(4) "Tribal Lands" shall mean Indian Country as defined by 18 U.S.C. Section 1151 subject to the jurisdiction of the KTTT, including without limitation:

(a) Tribal Trust Land. Any lands and waters held in trust by the Federal Government within the jurisdiction of the KTTT;

(b) Tribal Properties in Trust Statutes Process. Lands and water in process to achieve trust status under the Federal Government within the jurisdiction of the KTTT; and

(c) Other Properties. All other lands and waters however acquired and not currently in process to achieve trust status under the Federal Government within the jurisdiction of the KTTT.

(5) "Sales" shall mean the transfer, exchange or barter, by any means whatsoever, for a consideration by any person, association, partnership, or corporation, of liquor and beer products.

(6) "Alcohol" means and includes hydrated oxide of ethyl, ethyl alcohols, ethanol, spirits, or wine, and beer in concentration of more than one half of one percent of alcohol by volume, from whatever source or by whatever source or whatever process produced including all dilutions and mixtures of the substance.

(7) "Beer" means any malt beverage containing one half of one percent or more alcohol by volume and not more than four percent alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops, barley, or other grain, malt or similar products. "Beer" includes among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors.

(8) "Liquor" or "Alcoholic Beverage" means any alcoholic beverage including alcohol, spirits, wine, whiskey, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero and/or barreteago and beer in excess of 4% alcohol concentration and all fermented, spirituous, vinous or malt liquor or any other intoxicating liquid, solid, semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and intended for oral consumption.

(9) "Licensed Premises" means the location within the KTTT at which a person licensed to sell alcoholic beverages under this ordinance carries on such business, and includes all related and associated facilities under the control of the Licensee whether they are called a licensed premises, outlet or liquor outlet. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or recreational facility, the "licensed premises" shall be deemed to include the entire entertainment or recreational facility and associated areas.

(10) "Operator" shall mean any person twenty-one (21) years of age or older, properly licensed by the Commission to operate a liquor and/or beer outlet.

(11) "License" shall mean the privilege granted pursuant to this ordinance to any person to sell or distribute liquor or beer within the KTTT Jurisdiction.

(12) "Chairman", as used in this Ordinance, shall mean the chairman of the Tax Commission. The Tribal Council will name the Chairman of the Tax Commission. The Chairman will have the authority to call and preside over meetings, recommend policies and other action to be taken, and represent the commission with third parties.

Section 103. Prohibition

The sale, introduction for sale, purchase, or other dealing in beer, liquor and/or alcoholic beverages, except as is specifically authorized by this title, is prohibited within Tribal Lands.

Section 104. Liquor and Beer Tax Commission

Enactment: The Kickapoo Traditional Tribe of Texas' Tax Commission is hereby created. The Commission shall consist of seven (7) Commissioners to be appointed by the Tribal Council. The initial Commission shall serve for staggered terms, three of the initial members will serve for two years. The remaining four initial members will serve for four years. Thereafter the Tribal Council will appoint or reappoint, as determined by the Tribal Council to be in the best interest of the Commission, Commissioners to four year terms. Five of the Commission shall be Tribal members. All decisions, actions and/or orders shall be by majority vote. A minimum of four members of the commission will constitute a quorum. No action will be taken, order or decision made unless there is a quorum present at the meeting where said action, order and/or decision is being voted upon. The Commission shall operate by policies and procedures approved by the Tribal Council. The minimum qualifications a person must have to serve as a Commissioner shall be as follows:

(1) Must be over the age of eighteen (18); and

(2) Must have no felony convictions.

The Commission shall be empowered to:

(1) Administer this law by exercising general control, management, and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purpose of this law.

(2) Subject to Tribal Council approval, adopt rules and regulations in furtherance of the purpose of this law and in the performance of its administrative functions.

(3) Enforce the rules and regulations in furtherance of the purpose of this law and in the performance of its administrative functions.

Section 105. Application For Liquor and Beer Outlet License

(1) Application. Any person twenty-one (21) years of age or older, may apply to the Commission for a liquor and/or beer outlet license.

(2) Licensing Requirements. The person applying for such license must

make a showing once a year and must satisfy the Commission of the following, including but not limited to:

(a) That applicant is a person of good moral character;

(b) That applicant has never been convicted of violating any of the laws regarding the regulation of any spirituous, vinous, fermented or malt liquors, or of the gambling laws of the KTTT, the state of Texas, or any other tribe of the state of Texas or of the United States, or any foreign country, within three (3) years immediately preceding the date of the application;

(3) Processing of Application. The Commission Chairperson or Authorized Representative shall receive and process applications and be the official representative of the Commission regarding receipt of applications and related Kickapoo Traditional Tribe of Texas matters. If the Commission or its authorized representative is satisfied that the applicant meets the criteria in Section 105(2)(a) and (b) above, the Commission or its authorized representative may issue a license for the sale of liquor and/or beer products.

(4) Application Fee. Each Beer and/or Liquor License application shall be accompanied by a non-refundable application fee to be set by regulation of the Commission, with the concurrence of the Tribal Council.

(5) Discretionary Licensing. Nothing herein shall be deemed to create a duty or requirement to issue a license. Issuance of licenses is discretionary upon the Commission's determination of the best interest of the KTTT and the licensing grants a privilege, but not a property right, to sell liquor and/or beer within the jurisdiction of the KTTT at the licensed outlet(s).

Section 106. Liquor and Beer Licenses

Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer license, valid for one year from the date of issuance, which shall entitle the operator to establish and maintain only the type of outlet being permitted. This license shall not be transferable. The licensee must properly and publicly display the license in the place of business. It shall be renewable at the discretion of the Commission, by the submission by the Licensee of a subsequent application form and the payment of the application fee as provided in Section 105.

Section 107. Sales by Liquor Wholesalers and Transport of Liquors Upon The Kttt Indian Country

(1) Right of Commission to Scrutinize Suppliers. The Operator of any licensed outlet shall keep the Commission informed, in writing, of the identity of suppliers and/or wholesalers who supply or are expected to supply liquor or beer stocks to the outlet(s). The Commission may, at its discretion, limit or prohibit the purchase of said stock from a supplier or wholesaler for the following reasons: Nonpayment of tribal taxes; bad business practices, or sale of unhealthy supplies. A ten (10) day notice to stop supplier's purchases will be given by the Commission. However a stop purchase order may take effect immediately if there is a health emergency.

(2) Freedom of Information from Suppliers. Operators shall, in their purchase of stock and in their business relations with suppliers, cooperate with and assist the free flow of information and data to the Commission from suppliers relating to sales and business arrangements between the suppliers, retailers and operators. The Commission may, at its' discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the Operators.

(3) Businesses shall comply with applicable Tribal Laws, for domestication or entry of foreign corporations.

Section 108. Sales by Retail Operators

(1) Commission Procedures. The Commission shall adopt procedures which shall implement these laws and facilitate their enforcement. These procedures shall include prohibitions on sales to minors, provide for the locations where liquor may be consumed, identify persons prohibited from purchasing alcoholic beverages, designating hours and days when outlets may be open for business, regulate any other appropriate matters and institute controls of same.

(2) Sales to Minors. No person shall give, sell, or otherwise supply liquor or beer to any person less than twenty-one (21) years of age, either for his or her own use or for the use of his parents or for use of any other person.

(3) Consumption of Beer or Liquor upon Licensed Premises shall be prohibited unless otherwise allowed by regulation.

(4) Conduct on Licensed Premises.

(a) No Operator shall be disorderly, boisterous, or intoxicated on the licensed premises or any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous, or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

(b) No Operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd or obscene acts of conduct shall be those acts or conduct identified as such by the laws of the KTTT or that may be considered as such by a reasonable person.

(5) Employment of Minors. No person under the age of twenty-one (21) years shall be employed in any service in connection with the sale or handling of liquor and/or beer, either on a paid or voluntary basis.

(6) Operator's Premises Open to Inspector. The premises of all Operators including vehicles used in connection with beer and/or liquor sales, shall be open at all times to inspection by the Commission or its designated representative.

(7) Operator's Record. The originals or copies of all sales slips, invoices, and other memoranda, covering all purchases of beer and/or liquor by the Operator shall be kept on file on the retail premises of the Operator purchasing the same, for at least three (3) years after each purchase and shall be filed separately and kept apart from all other records and as nearly as possible shall be filed in consecutive order with each month's records kept separate so as to render the same readily available for inspection. All canceled checks, bank statements and books of accounting covering or involving the purchase of beer and/or liquor, and all memoranda showing payment for beer and/or liquor other than by check shall be likewise preserved for availability for inspection.

(8) Conformity with State Law. Operators shall comply with the State of Texas Alcoholic Beverage Code to the extent required by 18 U.S.C. 1161. However, the KTTT shall have the fullest jurisdiction allowed under federal law over liquor and beer and related products or activities, within the boundaries of all the Tribal Lands as defined herein.

Section 109. Tribal Excise Tax Imposed Upon Distribution of Beer and Liquor

(1) Tribal Excise Taxes. The Tribe shall have authority to assess and collect tax on sales of liquor and beer products to the consumer or purchaser. The tax shall be collected and paid to the Commission upon Liquor and Beer products sold within the jurisdiction of the Tribe. The Tribe may establish differing tax rates for any given class of merchandise, which shall be paid prior to the time of retail sales and delivery thereof.

(2) Added to Retail Price. An excise tax, to be set by the Tribal Council of the KTTT, on wholesale prices shall be added to the retail selling price of liquor and beer products sold to the consumer. Said excise tax will be presumed to be direct taxes on the retail consumer, pre-collected for the purpose of convenience and facility only.

(3) Within 72 hours after receipt of any beer or alcoholic beverage by any wholesaler or retailer subject to this Ordinance, a tribal tax stamp shall be securely affixed to each package, denoting the collection of the tribal tax. Retailers or sellers of beer or alcoholic beverages within KTTT jurisdiction may buy and sell or have in their possession only beer or alcoholic beverages which have the Tribal stamp affixed to each package.

Section 110. Liability for Bills

The KTTT and/or the Commission shall have no legal responsibility for any unpaid bills owed by a liquor or beer outlet to a wholesaler supplier or any other person or entity.

Section 111. Other Business by Operator

An Operator may conduct another business simultaneously with managing a liquor or beer outlet. *provided,* if such other business may in any manner be affiliated or related to the beer or liquor outlet, it must be approved by majority vote of the Commission prior to initiation. Said other business may be conducted on the same premises as a liquor or beer outlet, provided that the Operator shall maintain books of account that clearly differentiate the liquor or beer portion of the business.

Section 112. Tribal Liability and Credit

(1) No liability. Unless explicitly authorized by Tribal statute, Operators are forbidden to represent or give the impression to any person or entity that he or she is an official representative of either the KTTT or the Commission, authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The Operator shall hold the KTTT harmless from all claims and liability of whatever nature. The Commission shall revoke Operator's licensees) if said outlet(s) is not operated in a businesslike manner, if it does not remain financially solvent, or does not pay its operating expenses and bills before they become delinquent.

(2) Insurance. The Operator shall maintain at his or her expense adequate Insurance covering liability, fire, theft, vandalism and other insurance risks. The Commission may establish as a condition of any license, the required insurance limits and additional coverage deemed advisable, proof of which shall be filed with the Commission.

Section 113. Audit and Inspection

(1) All of the books and other business records of the licensed premises shall be available for inspection and audit by the Commission or its authorized representative at any reasonable time.

(2) Bond for Excise Tax. The excise tax together with reports on forms to be approved by the Commission shall be remitted to the Commission's office on a monthly basis, unless the Commission specifies otherwise in writing. The Operator shall furnish a bond in an amount satisfactory to the Commission, guaranteeing his payment of excise taxes.

Section 114. Revocation of Opertor's License

(1) Failure of an Operator to abide by the requirements of this Ordinance and any additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the Operator's License as well as enforcement of the penalties provided in Section 115 of this Act.

(2) Upon determining that any person licensed by the Commission to sell beer or alcoholic beverage is for any reason no longer qualified to hold such license or reasonably appears to have violated any terms of the Tribal and/or state license or regulations. The Chairman shall immediately serve written notice upon licensee directing that he show cause within ten (10) days why his or her Operator's license should not be revoked or restricted. The notice shall state the grounds relied upon for the proposed revocation or restriction. Violations may include failure to pay taxes when due and owing, or having been found by any forum of competent jurisdiction, including the Commission, to have violated the terms of a Tribal or state license or of any provision of this title.

(3) If the Licensee fails to respond to the notice within the ten (10) days of service, the Chairman may issue an order, effective immediately, revoking the license or placing such restriction on the Licensee as the Chairman deems appropriate. The Licensee may, within the 10 day period, file with the Office of the Chairman a written response and request for hearing before the Commission.

(4) At the hearing, the Licensee may present evidence and arguments regarding why his license should not be revoked.

(5) The Commission after considering all of the evidence and arguments shall issue a written decision either upholding the license, revoking the license or imposing some lesser penalty (such as temporary suspension or a fine). Such decision shall be final and conclusive.

(6) Within thirty days of the Commission's final decision, such decision may be appealed to the KTTT Court, by posting a bond with the Court, sufficient to cover the Commission's final assessment or ruling. Any finding of fact or omission are conclusive upon the Court unless clearly contrary to law. The purpose of Court review is not to substitute the Court's findings of facts or opinion for those of the Commission's but to guarantee due process of law. If the Court should rule for the appealing party, the Court may remand for a new hearing giving such guidance for the conduct of such as it deems necessary. No damages or monies may be awarded against the Commission, its members, nor the KTTT and its agents and employees in such action.

Section 115. Violation—Penalties

Any person who violates these laws or elicits, encourages, directs or causes someone else to violate these laws shall be guilty of an offense and subject to a fine. Failure to have a current, valid or proper license shall not constitute a defense to an alleged violation of the licensing laws or regulations. The Kickapoo Tribal Court shall have jurisdiction over the proceeding.

(1) Any person convicted of committing any violation of this Ordinance shall be subject to punishment of up to one year imprisonment and/or a fine not to exceed Five Thousand Dollars ($5,000.00).

(2) Additionally, any person upon committing any violation of any provision of this Ordinance may be subject to a civil action for trespass and upon having been determined by the Court to have committed the violation, shall be assessed such damages as the Court deems appropriate under the circumstances.

(3) Any person suspected of having violated any provision shall, in addition to any other penalty imposed hereunder, be required to surrender any beer or alcoholic beverages in such person's possession to the officer making the arrest or complaint. The surrendered beverages, if previously unopened, shall only be returned to said person upon a finding by the Court after a trial on the Kickapoo Traditional Tribe of Texas merits that the individual

committed no violation of the Tax Ordinance and of the Tribal Tax laws.

(4) Any Operator who violates the provisions set forth herein shall forfeit all of the remaining stock on the licensed premises(s). The Commission shall be empowered to seize products.

(5) Any stock, goods or other items subject to this Ordinance that have not been registered, licensed, or taxes paid shall be contraband and subject to immediate confiscation by the Commission or its employees or agents, provided, within 15 days of the seizure the Commission shall cause to be filed a forfeiture action against such property. The action shall allege the reason for the seizure or confiscation. Upon sufficient proof, the Court shall order the property forfeited and title vested in the KTTT.

(6) Physical seizure of items shall be in accordance with the provisions contained in the KTTT law enforcement policies.

Section 116. Possession for Personal Use

Possession of beer or alcoholic beverages for the personal use by persons over the age of 21 years shall, unless otherwise prohibited by Federal or Tribal law or regulation, be lawful within the Tribal Lands.

Section 117. Transportation Through Reservation not Affected

Nothing herein shall pertain to the otherwise lawful transportation of beer or alcoholic beverages through the Tribal Lands by persons remaining upon public highways where such beverages are not delivered, or sold or offered for sale to anyone with the Tribal Lands.

Section 118. Severability

If any provision of these laws is held invalid, the remainder of the laws and their application to other persons or circumstances is not affected.

All prior statutes, ordinances, and resolutions enacted by the KTTT regulating, authorizing, prohibiting or in any way relating to the sale of beer or alcoholic beverages within the Tribal Lands are hereby repealed and have no further force or effect.

Section 120. Sovereign Immunity Preserved

Nothing in this Ordinance shall be construed as a waiver or limitation of the sovereign Immunity of the KTTT or its agencies nor their officers or employees.

Section 121. Amendment

Pursuant to Article VII—Powers of the Traditional Council of the Tribes Constitution, the Traditional Council shall have the authority to amend the provisions of the foregoing Beer and Liquor Tax Ordinance.

Section 122–130. Reserved for Amendment

This Ordinance shall be effective upon certification by the United States Secretary of the Interior and its publication in the **Federal Register**.

READ, PASSED APPROVED AND ENACTED at a duly called Tribal Council meeting on the 30th day of March 2011.

Kickapoo Traditional Tribe of Texas

TRIBAL COUNCIL

/S/ Juan Garza, Jr., Council Chairman.
/S/ Jesus Anico, Council Secretary.
/S/ Rogelio Elizondo, Council Treasurer.
/S/ David J. Gonzalez, Council Member.
/S/ Nanate Hernandez, Council Member.

[FR Doc. 2012–4052 Filed 2–21–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Confederated Tribes of the Umatilla Indian Reservation—Amendment to Liquor Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amendments to the Confederated Tribes of the Umatilla Liquor Code. The Code regulates and controls the possession, sale and consumption of liquor within the Confederated Tribes of the Umatilla Reservation. The land is located on trust land and this Code allows for the possession and sale of alcoholic beverages within the Confederated Tribes of the Umatilla's Reservation. This Code will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective 30 days after February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Betty Scissons, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232, Phone: (503) 231–6723; Fax: (503) 231–6731: or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; Telephone (202) 513–7626.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation duly adopted Resolution No. 10–056 to amend the Confederated Tribes of the Umatilla Indian Reservation Liquor Code on July 12, 2010.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation duly adopted Resolution No. 10–056 to amend the Confederated Tribes of the Umatilla Indian Reservation Liquor Code on July 12, 2010.

Dated: February 9, 2012.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

The amendment to the Confederated Tribes of the Umatilla Indian Reservation Liquor Code reads as follows:

CHARTER 1. LIQUOR CODE

SECTION 1.01. TITLE

This Code shall be the Liquor Code of the Confederated Tribes of the Umatilla Indian Reservation (Confederated Tribes) and shall be referenced as the Liquor Code.

SECTION 1.02. FINDINGS AND PURPOSE

A. The introduction, possession, and sale of liquor on Indian reservations has historically been recognized as a matter of special concern to Indian tribes and to the United States. The control of liquor on the Umatilla Indian Reservation remains exclusively subject to the legislative enactments of the Confederated Tribes in its exercise of its governmental powers over the Reservation, and the United States.

B. Federal law prohibits the introduction of liquor into Indian Country (18 U.S.C. § 1154), and authorized tribes to decide when and to what extent liquor transactions, sales, possession and service shall be permitted on their reservation (18 U.S.C. § 1161).

C. The Board of Trustees, as the governing body of the Confederated

Tribes pursuant to Article VI, § 1 of the Constitution and Bylaws of the Confederated Tribes, have adopted Resolutions to permit the sale and service of liquor at the Wildhorse Resort & Casino and at Coyote Business Park as provided in this Code, but at no other locations.

D. Pursuant to the authority in Article VI, § 1(a) of the Confederated Tribes' Constitution, the Board of Trustees has the authority "to represent the [Confederated] Tribes and to negotiate with the Federal, State and local governments...on...projects and legislation that affect the [Confederated] Tribes".

E. Pursuant to the authority in Article VI, § 1(d) of the Confederated Tribes' Constitution, the Board of Trustees has the authority "to promulgate and enforce ordinances governing the conduct of all persons and activities within the boundaries of the Umatilla Indian Reservation, providing for the procedure of the Board of Trustees, and carrying out any powers herein conferred upon the Board of Trustees".

F. The enactment of this Liquor Code to govern liquor sales and service on the Umatilla Indian Reservation, and the limitation of such liquor sales and service at the Wildhorse Resort & Casino and Coyote Business Park, will increase the ability of the Confederated Tribes to control Reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation of Tribal government and the delivery of governmental services, as well as provide an amenity to customers at the Wildhorse Resort & Casino.

G. The Confederated Tribes have entered into a Memorandum of Understanding (MOU) with the Oregon Liquor Control Commission to deal with governmental issues associated with the licensing and regulation of liquor sales on the Umatilla Indian Reservation.

SECTION 1.03. DEFINITIONS

A. Unless otherwise required by the context, the following words and phrases shall have the designated meanings.

1. "Alcohol". That substance known as ethyl alcohol, hydrated oxide or ethyl, spirits or wine as defined herein, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of those substances.
2. "Coyote Business Park". Shall include Coyote Business Park North, South and East, but shall not include the Arrowhead Travel Plaza.
3. "Wildhorse Chief Executive Officer". That person appointed by the Confederated Tribes to manage the Wildhorse Resort & Casino.
4. "Liquor" or "Liquor Products". Includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer) and all fermented, spirituous, vinous, or malt liquor, or a combination thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor or otherwise intoxicating in every liquid or solid or semi-solid or other substance patented or not containing alcohol, spirits, wine, or beer, and all drinks of potable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one percent (1%) of alcohol by weight shall be conclusively deemed to be intoxicating.
5. "Wildhorse Resort & Casino". Shall be the casino, hotels, golf course, and RV park located on the 640 acre Wildhorse site located on the Umatilla Indian Reservation which is more specifically described in Exhibit 1 to the Tribal-State Compact between the Confederated Tribes and the State of Oregon.
6. "Sale" and "Sell". Includes exchange, barter, and traffic; and also the supplying or distribution by any means whatsoever, of liquor or any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or wine, by any person to any other person; and also includes the supply and distribution to any other person.
7. "Spirits". Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.
8. "Wine". Any alcoholic beverage obtained by fermentation of fruits, grapes, berries, or any other agricultural product containing sugar, to which any saccharin substances may have been added before, during or after fermentation, and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits; such as port, sherry, muscatel, and anglican, not exceeding seventeen percent (17%) of alcohol by weight.

SECTION 1.04. JURISDICTION

To the extent permitted by applicable law, the Confederated Tribes asserts jurisdiction to determine whether liquor sales and service are permitted within the boundaries of the Umatilla Indian Reservation. As provided in section 1.06 of this Code, liquor sales and service is only permitted at the Wildhorse Resort & Casino facilities and in the Coyote Business Park under this Code. Nothing in this Code is intended nor shall be construed to limit the jurisdiction of the Confederated Tribes to all lands within the boundaries of the Umatilla Indian Reservation.

SECTION 1.05. RELATION TO OTHER LAWS

All prior codes, ordinances, resolutions and motions of the Confederated Tribes regulating, authorizing, prohibiting, or in any way dealing with the sale or service of liquor are hereby repealed and are of no further force or effect to the extent they are inconsistent or conflict with the provisions of this Code. Specifically, amendments to the Criminal Code to make it consistent with this Liquor Code have been approved by Resolution 05–095 (October 3, 2005). No Tribal business licensing law or other Tribal law shall be applied in a manner inconsistent with the provisions of this Code.

SECTION 1.06. AUTHORIZED SALE AND SERVICE OF LIQUOR

A. Liquor may be offered for sale and may be served on the Umatilla Indian Reservation only at the following locations:

1. Wildhorse Casino. In the Wildhorse Casino, liquor may be sold or served only in the following areas: lounge(s), restaurant(s), bingo/multipurpose hall when used for entertainment, food service, or convention/meeting purposes, conference/meeting room facility, entertainment facilities constructed within or adjacent to the Casino building and on casino premises in connection with special events (i.e., concert, rodeo event, car shows, *etc.*). All such sales and service of liquor shall be consistent with the Tribal-State Compact.
2. Wildhorse Golf Course. In the Wildhorse Golf Course, liquor may be sold or served only in the following areas: clubhouse and on the golf course.
3. Wildhorse Hotels. In the Wildhorse Hotels, liquor may be sold or served

only in the following areas: hotel meeting rooms and in hotel rooms by guest use of room service, *etc.*).

4. Wildhorse RV Park. In the Wildhorse RV Park, liquor may be sold or served only in the following areas: in common areas at special events and in individual RVs.
5. Coyote Business Park. In the Coyote Business Park, liquor may be sold or served by any Coyote Business Park lessee if liquor sales and service is permitted in the lease between the lessee and the Confederated Tribes.

SECTION 1.07. PROHIBITIONS

A. General Prohibitions. The commercial introduction of liquor for sales and service, other than as permitted by this Code, is prohibited within the Umatilla Indian Reservation, and is hereby declared an offense under Tribal law. Federal liquor laws applicable to Indian Country shall remain applicable to any person, act, or transaction which is not authorized by this Code and violators of this Code shall be subject to federal prosecution as well as to legal action in accordance with the law of the Confederated Tribes.

B. Age Restrictions. No person shall be authorized to serve liquor unless they are at least 21 years of age. No person may be served liquor unless they are 21 years of age.

C. Off Premises Consumption of Liquor.

1. All liquor sales and service authorized by this Code at the Wildhorse Resort & Casino shall be fully consumed within the areas of the Wildhorse Resort & Casino as set forth in section 1.06 of this Code. At the Wildhorse Resort & Casino, no open containers of liquor, or unopened contâiners of liquor in bottles, cans, or otherwise may be permitted outside of the above-described premises.
2. Liquor sales and service at Coyote Business Park shall be conducted in strict compliance with the lease between the Coyote Business Park lessee and the Confederated Tribes.

D. No Credit Liquor Sales. The sales and service of liquor authorized by this Code shall be upon a cash basis only. For purposes of this Code, payment for liquor on a cash basis shall include payment by cash, credit card, or check.

SECTION 1.08. CONFORMITY WITH STATE LAW

A. Authorized liquor sales and service on the Umatilla Indian Reservation shall comply with Oregon State liquor law standards to the extent required by 18 U.S.C. § 1161.

B. Wildhorse Resort & Casino. The Wildhorse Chief Executive Officer shall be responsible for ensuring that all OLCC license requirements are satisfied, that the license(s) is renewed on an annual basis, and that all reasonable and necessary actions are taken to sell and serve liquor to Wildhorse patrons in a manner consistent with this Code, applicable State law, and the Tribal-State Compact. The Wildhorse Chief Executive Officer shall also be authorized to purchase liquor from the State or other source for sale and service within the Wildhorse Resort & Casino. The Wildhorse Chief Executive Officer is further authorized to treat as a casino expense any license fees associated with the OLCC liquor license.

C. Coyote Business Park. The Coyote Business Park lessee authorized to sell or serve liquor as provided in section 1.06(A)(5) of this Code, shall be responsible for insuring that all OLCC license requirements are satisfied, that the license(s) is renewed on an annual basis, and that all reasonable and necessary actions are taken to sell and serve liquor in a manner consistent with this Code and applicable Tribal and State law.

SECTION 1.09. PENALTY

Any person or entity possessing, selling, serving, bartering, or manufacturing liquor products in violation of any part of this Code shall be subject to a civil fine of not more than $500 for each violation involving possession, but up to $5,000 for each violation involving selling, bartering, or manufacturing liquor products in violation of this Code, and violators may be subject to exclusion from the Umatilla Indian Reservation. In addition, persons or entities subject to the criminal jurisdiction of the Confederated Tribes who violate this Code shall be subject to criminal punishment as provided in the Criminal Code. All contraband liquor shall be confiscated by the Umatilla Tribal Police Department (UTPD). The Umatilla Tribal Court shall have exclusive jurisdiction to enforce this Code and the civil fines, criminal punishment and exclusion authorized by this section.

SECTION 1.10. SOVEREIGN IMMUNITY PRESERVED

Nothing in this Code is intended or shall be construed as a waiver of the sovereign immunity of the Confederated Tribes. No manager or employee of the Confederated Tribes or the Wildhorse Resort & Casino shall be authorized, nor shall they attempt, to waive the sovereign immunity of the Confederated Tribes pursuant to this Code.

SECTION 1.11. SEVERABILITY

If any provision or provisions in this Code are held invalid by a court of competent jurisdiction, this Code shall continue in effect as if the invalid provision(s) were not a part hereof.

SECTION 1.12. EFFECTIVE DATE

This Code shall be effective following approval by the Board of Trustees and approval by the Secretary of the Interior or his/her designee and publication in the **Federal Register** as provided by federal law.

[FR Doc. 2012–4131 Filed 2–21–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake)—Amendment to Liquor Beverage Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice

SUMMARY: This notice publishes the amendments to the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians' Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Match-E-Be-Nash-She-Wish Band of Pottawatomi tribal lands. The lands are located in Indian Country and this Ordinance allows for the possession and sale of alcoholic beverages within their boundaries. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective 30 days after February 22, 2012.

FOR FURTHER INFORMATION CONTACT: David Christensen, Tribal Operations Officer, Midwest Regional Office, Bureau of Indian Affairs, Norman Pointe II, 5600 American Boulevard West, Suite 500, Bloomington, Minnesota 55437, Phone: (612) 735–4554; Fax: (612) 713–4401; or De Springer, Office

of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; Telephone (202) 513–7626.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Tribal Council adopted this amendment to the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indian Liquor Control Ordinance by Resolution 11–639, on January 6, 2011.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council duly adopted this amendment to the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians' Liquor Control Ordinance on January 6, 2011.

Dated: February 9, 2012.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

The amendments to Chapter 3, Subsection 5(h) and Chapter 4, Section 1 of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians' Liquor Control Ordinance read as follows:

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Liquor Control Ordinance

Chapter 3—Tribal Liquor License

Section 5. Any Tribal Liquor License shall be subject to such conditions as the Tribal Council shall impose, including, but not limited to the following:

(h) Alcoholic Beverages may only be provided on a complimentary basis, given away, or furnished without charge in any facility licensed under this Ordinance if such action is consistent with the provisions of the Tribe-State Compact, the Tribal Liquor License, or other laws or regulations of the Tribe.

Chapter 4—Incorporation of Michigan Laws by Reference

Section 1. In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as tribal law those Michigan laws, as now or hereafter amended, relating to the sale and regulation of Alcoholic Beverages encompassing the following areas: sale to a Minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; and hours of operation.

The following laws from the Michigan Liquor Control Code of 1998 are hereby adopted and applied as Tribal law:

436.1233 Uniform prices for sale of alcoholic liquor; gross profit; discount for certain sales of alcoholic liquor.

436.1701 Selling or furnishing alcoholic liquor to person less than 21 years of age; failure to make diligent inquiry; misdemeanor; signs; consumption of alcoholic liquor as cause of death or injury; felony; enforcement against licensee; defense in action for violation; report; definitions.

436.1703 Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; screening and assessment; chemical breath analysis; construction of section; exceptions; "any bodily alcohol content" defined.

436.1707 Selling, serving, or furnishing alcohol; prohibitions.

436.1801 Granting or renewing license; selling, furnishing or giving alcoholic liquor to minor or person visibly intoxicated; right of action for damage or personal injury; actual damages; institution of action; notice; survival of action; separate actions by parents; commencement of action against retail licensee; indemnification; defenses available to licensee; rebuttable presumption; prohibited causes of action; section as exclusive remedy for money damages against licensee; civil action subject to revised judicature act.

436.1815 Adherence to responsible business practices as defense; compensation of employee on commission basis.

436.1901 Compliance required, prohibited acts.

436.1905 Selling or furnishing alcoholic liquor to minor; enforcement actions prohibited; conditions; exception.

436.2005 Adulterated, misbranded, or refilled liquor.

The laws referenced in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Michigan, unless otherwise agreed by the Tribe and State.

[FR Doc. 2012–4053 Filed 2–21–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO35000.L14300000.FR0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 60–Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information from applicants for a desert land entry for agricultural purposes. The Office of Management and Budget (OMB) has assigned control number 1004–0004 to this information collection.

DATES: Submit comments on the proposed renewal by April 23, 2012.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail. Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: *Jean_Sonneman@blm.gov.*

Please indicate "Attn: 1004–0004" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren at 202–912–7335. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Mr. Holdren.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM will be submitting to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection

activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB. Before including your address, telephone number, email address, or other personal identifying information in your comments, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Desert Land Entry Application (43 CFR Part 2520).

Form: Form 2520–1, Desert Land Entry Application.

OMB Control Number: 1004–0004.

Abstract: The BLM needs to collect the information in order to determine if an applicant is eligible to make a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, Washington, and Wyoming.

Frequency of Collection: On occasion.

Estimated Number and Description of Respondents: 3.

Estimated Reporting and Recordkeeping "Hour" Burden: 6 hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: $45.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2012–4100 Filed 2–21–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG12–0094]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 25 S., R. 1 W., accepted February 1, 2012
T. 16 S., R. 7 W., accepted February 3, 2012
T. 10 S., R. 2 E., accepted February 8, 2012
T. 39 S., R. 8 W., accepted February 14, 2012

Washington

T. 12 N., R. 17 E., accepted February 14, 2012

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: 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.

Mary J.M. Hartel,

Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2012–4032 Filed 2–21–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000 L12200000.PM0000 LXSS006F0000 261A; 12–08807; MO# 4500032205; TAS: 14X1109]

Notice of Public Meetings: Mojave-Southern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave-Southern Great Basin Resource Advisory Council (RAC) will meet in Ely and Las Vegas, Nevada. The meetings are open to the public.

DATES: March 16, 2012, at the BLM Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada; July 19–20, 2012, at the BLM Ely District Office, 702 North Industrial Way, Ely, Nevada; and September 21, 2012, at the BLM Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada. Meeting times will be made public prior to each meeting. Each meeting will include a general public comment period that will be listed in the final meeting agenda. An agenda will be available two weeks prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Hillerie Patton, (702) 515–5046, Email: *hpatton@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada. Topics for discussion will include, but are not limited to: Renewable energy development and transmission, the greater sage-grouse, BLM Battle Mountain District and Southern Nevada District resource management plans, subgroup reports, and other topics that may be raised by RAC members.

The final agendas with any additions/corrections to agenda topics, locations,

field trips and meeting times, will be posted on the BLM Web site at: *http://www.blm.gov/nv/st/en/res/resource_advisory.html*, and will be sent to the media at least 14 days before the meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Hillerie Patton at 702–515–5046 no later than one week before the start of each meeting.

Dated: February 15, 2012.

Erica Szlosek,

Chief, Office of Communications, BLM Nevada State Office.

[FR Doc. 2012–4026 Filed 2–21–12; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[DN 2877]

Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Radio Frequency Integrated Circuits and Devices Containing Same*, DN 2877; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*, and 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 (*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: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Peregrine Semiconductor Corporation on February 15, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency integrated circuits and devices containing same. The complaint names as respondents RF Micro Devices Inc. of NC; and Motorola Mobility Inc. of IL.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 2877") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: February 15, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4042 Filed 2–21–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0006]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR–28)

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robin M. Stutman, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–28. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys and qualified representatives notifying the Immigration Court that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Immigration Court that he or she is representing an alien before the Immigration Court.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 165,614 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 16,561 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–4092 Filed 2–21–12; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0005]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR–27)

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robin M. Stutman, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–27. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Attorneys or representatives notifying the Board of Immigration Appeals (Board) that they are representing a party in proceedings before the Board. *Other:* None. *Abstract:* This information collection is necessary

to allow an attorney or representative to notify the Board that he or she is representing a party before the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 28,868 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,867 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–4093 Filed 2–21–12; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0012]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Request for Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR–31)

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robin M. Stutman, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–31. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Non-profit organizations seeking to be recognized as legal service providers by the Board of Immigration Appeals (Board) of the Executive Office for Immigration Review (EOIR). *Other:* None. *Abstract:* This information collection is necessary to determine whether the organization meets the regulatory and relevant case law requirements for recognition by the Board as a legal service provider, which then would allow its designated representative or representatives to seek full or partial accreditation to practice before EOIR and/or the Department of Homeland Security.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 105 respondents will complete the form annually with an average of 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 210 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–4095 Filed 2–21–12; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0007]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Immigration Practitioner Complaint Form

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robin M. Stutman, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia, 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Immigration Practitioner Complaint Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–44, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals who wish to file a complaint against an immigration practitioner authorized to appear before the Board of Immigration Appeals and the immigration courts. Other: None. Abstract: The information on this form will be used to determine whether the Office of the General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 200 respondents will complete the form annually with an average of two hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 400 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–4094 Filed 2–21–12; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0051]

Agency Information Collection Activities: Proposed collection; comments requested: Certification of Secure Gun Storage or Safety Devices

ACTION: 60-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nicholas O'Leary, Acting Chief, Firearms Industry Programs Branch, 99 New York Ave. NE., Washington, DC 20226, or *fipb-informationcollection@atf.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Secure Gun Storage or Safety Devices.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.42. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The requested information will be used to ensure that applicants for a federal firearms license are in compliance with the requirements pertaining to the availability of secure gun storage or safety devices.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 63,514 respondents will complete a 1 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,058 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–4001 Filed 2–21–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0049]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for National Firearms Examiner Academy

ACTION: 60-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James Yurgealitis, *james.yurgealitis@atf.gov*, 202–648–6060, National Laboratory Center, 6000 Ammendale Road, Ammendale, MD 20705.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for National Firearms Examiner Academy.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6330.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government.

Need for Collection

The information requested on this form is necessary to process requests from prospective students to attend the ATF National Firearms Examiner Academy and to acquire firearms and toolmark examiner training. The information collection is used to determine the eligibility of the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 75 respondents will complete a 12 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 15 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145th Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–4000 Filed 2–21–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. International Paper Company et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *International Paper Company et al.*, Civil Action No. 1:12–cv–00227. On February 10, 2012, the United States filed a Complaint alleging that the proposed acquisition by International Paper Company of Temple-Inland Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the divestiture of Temple-Inland's containerboard mills in Waverly, Tenn., and Ontario, Calif., and either International Paper's containerboard mill in Oxnard, Calif., or International Paper's containerboard mill in Henderson, Ky., but not both of those mills.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, (telephone: 202–307–0827).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court For the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Plaintiff, v. *International Paper Company, 6400 Poplar Avenue, Memphis, TN 38197, and Temple-Inland Inc., 1300 MoPac Expressway South, Third Floor, Austin, TX 78746,* Defendants.

Case: 1:12–cv–00227.
Assigned To: Collyer, Rosemary M.
Assign Date: 2/10/2012.
Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin International Paper Company ("International Paper") from acquiring Temple-Inland Inc. ("Temple-Inland"). Plaintiff alleges as follows:

I. Nature of the Action

1. On September 6, 2011, International Paper agreed to acquire Temple-Inland in a transaction valued at $4.3 billion. International Paper and Temple-Inland are, respectively, the largest and third-largest producers of containerboard in the United States and Canada (which the paper industry and this Complaint refer to collectively as "North America"). Containerboard is the paper that is used to make corrugated boxes.

2. The proposed merger would increase International Paper's share of the containerboard capacity in North America from approximately 26 to 37 percent. After the merger, the combined firm would likely reduce containerboard output, raising containerboard prices throughout North America. International Paper would also likely accommodate its large rivals' efforts to raise containerboard prices by reducing their own output, making such price increases more likely. These higher containerboard prices would, in turn, raise the prices of corrugated boxes.

3. Because International Paper's proposed merger with Temple-Inland is likely to substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, the Court should permanently enjoin this merger.

II. Jurisdiction, Venue, and Interstate Commerce

4. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, seeking injunctive and other equitable relief from the defendants' violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

5. International Paper and Temple-Inland sell containerboard, corrugated boxes, and other industrial products throughout the United States. They engage in interstate commerce and in activities substantially affecting interstate commerce.

6. The Court has subject-matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. 25; and 28 U.S.C. 1331, 1337(a), and 1345.

7. Defendants have consented to personal jurisdiction in this District. The Court also has personal jurisdiction over the defendants under Section 12 of the Clayton Act, 15 U.S.C. 22.

8. Defendants have consented to venue in this District. Venue is also proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391.

III. Defendants and the Transaction

9. International Paper is a corporation organized and existing under the laws of the State of New York, with its headquarters in Memphis, Tennessee. International Paper owns and operates 12 containerboard mills and 133 plants that convert containerboard into corrugated boxes ("box plants") in the United States. In 2010, International Paper's annual revenues were approximately $25.2 billion, with its North American Industrial Packaging Group, which produces containerboard and corrugated products, accounting for $8.4 billion.

10. Temple-Inland is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in Austin, Texas. Temple-Inland owns and operates seven containerboard mills and 53 box plants in the United States. In 2010, Temple-Inland's annual revenues were approximately $3.8 billion, with its corrugated-packaging business accounting for $3.2 billion.

IV. The Relevant Market

A. Relevant Product Market: Containerboard

11. The relevant product market for analyzing the likely effects of the proposed merger is containerboard. There are two types of containerboard: (1) Linerboard, the paper that forms the inner and outer facings of a corrugated sheet; and (2) medium, the paper that is inserted between the inner and outer linerboards in a wavy, fluted pattern. Linerboard is made from virgin wood fiber, recycled fiber (usually "old corrugated containers," or "OCC"), or a combination of both virgin and recycled fibers. Medium is typically made from recycled fiber, but can also be made from virgin fibers or a combination of recycled and virgin fibers.

12. Linerboard and medium are relatively undifferentiated products. The linerboard made by one North American producer is substantially the same as the linerboard made by other producers. The medium made by the various producers is also substantially the same.

13. Although linerboard and medium are typically produced on different machines and have different performance characteristics, it is appropriate to view them as a single relevant product market because (1) containerboard producers and their customers generally regard competition in terms of a single containerboard market, not separate markets for linerboard and medium, and (2) analyzing them as separate products would not significantly alter the market shares or the analysis of the proposed merger's competitive effects.

14. Producers manufacture containerboard at mills and then ship it to box plants. At box plants, a large machine called a corrugator combines the linerboard and medium into rigid corrugated sheets. Box plants then convert the sheets into corrugated packaging, including corrugated boxes and displays. The work performed at box plants is sometimes divided between separate facilities called sheet feeders (which combine linerboard and medium into corrugated sheets) and sheet plants (which convert the sheets into corrugated boxes). Containerboard typically is the largest cost component of a corrugated box, accounting for a majority of the price.

15. For box manufacturers, there is no reasonable substitute for containerboard: Boxes made from other types of paper lack the required performance characteristics, such as the necessary strength, basis weight, and thickness. Furthermore, for box customers, there is no reasonable substitute for corrugated boxes: Other products used to carry and transport goods, such as returnable plastic containers, are typically too expensive or lack the required performance characteristics to serve as a commercially viable alternative.

16. Consequently, a small but significant increase in the price of containerboard in North America is unlikely to cause a sufficient number of containerboard or corrugated box customers to switch to other types of products such that the price increase would be unprofitable. Therefore, containerboard is a relevant product market and a "line of commerce" within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market: North America

17. The relevant geographic market for analyzing the likely effects of the proposed merger on the production and sale of containerboard is North America.

18. Containerboard produced outside of North America is not a commercially viable substitute for containerboard produced in North America due to

higher transportation costs, volatile and unfavorable currency exchange rates, lower-quality fiber, and other disadvantages. Because of these disadvantages, containerboard produced outside of North America accounts for less than one percent of the containerboard sold in North America.

19. Consequently, a small but significant increase in the price of containerboard in North America is unlikely to cause a sufficient number of customers of containerboard or corrugated boxes to switch to containerboard produced outside of North America to make the price increase unprofitable. Therefore, North America is a relevant geographic market and a "section of the country" within the meaning of Section 7 of the Clayton Act for the production and sale of containerboard.

V. Likely Anticompetitive Effects

20. The proposed merger would likely substantially lessen competition in the production and sale of containerboard in North America. International Paper controls approximately 26 percent of North American containerboard capacity, and Temple-Inland controls approximately 11 percent. Thus, as alleged in paragraph 2, the proposed merger would give International Paper control over approximately 37 percent of North American containerboard capacity. Post-merger, the four largest producers would control approximately 74 percent of that capacity. A number of smaller producers, none with a share higher than three percent, account for the remainder of the market.

21. Using a standard concentration measure called the Herfindahl–Hirschman Index (or "HHI," defined and explained in Appendix A), the proposed merger would significantly raise market concentration and result in a moderately concentrated market, producing an HHI increase of approximately 605 and a post-merger HHI of approximately 2,025. The defendants' combined market share (approximately 37 percent), coupled with the significant increase in market concentration (605), exceed the levels that courts have found to create a presumption that a proposed merger likely would substantially lessen competition.

22. The proposed merger is likely to cause International Paper to engage in unilateral conduct that would raise the market price of containerboard. In the containerboard industry, there is a close relationship between the market price and industry output. All else equal, when industry output grows, the market price of containerboard falls, and as industry output shrinks, the market price of containerboard rises. Because of this close relationship, a containerboard producer can raise the market price of containerboard by strategically reducing output, for example, by idling containerboard machines or closing mills. When a producer significantly reduces output, it loses profits on the output that it removed, but it gains profits (from the resulting higher price) on the output that remains.

23. A producer's willingness to raise the market price by reducing output depends on its size: As a producer grows larger, it is more likely to profit from strategically reducing output because it will have more sales at the higher price to offset the lost sales on the reduced output. In contrast, a small producer is unlikely to profit from reducing output because it will not have sufficient remaining sales at the higher price, making the reduction unprofitable.

24. By combining the containerboard capacity of International Paper and Temple-Inland, the proposed merger would significantly expand the volume of containerboard over which International Paper would benefit from a price increase. With that additional volume, International Paper would likely find it profitable to strategically reduce containerboard output, for example, by idling containerboard machines or closing mills. As described generally in paragraphs 22–23, although International Paper would lose profits on the output that it removed, it would gain even greater profits on the output that remains.

25. The proposed merger would also likely cause International Paper to engage in parallel accommodating conduct. Due to its additional containerboard volume obtained as a result of the merger, International Paper would benefit more from a price increase after the proposed merger. Thus, if a large rival attempted to raise the market price by reducing output, International Paper would likely accommodate its rival's actions by reducing or not increasing its own output. The rival would thus be likely to increase the market price by reducing output after International Paper and Temple-Inland complete the proposed merger.

VI. Absence of Countervailing Factors

26. Supply responses from competitors or potential competitors will not prevent the likely anticompetitive effects of the proposed merger. Virtually all existing North American containerboard producers are capacity-constrained and have other operational limitations that would prevent them from significantly expanding output using their existing machines in response to a post-merger increase in the price of containerboard. North American producers are also unlikely to respond to a domestic price increase by diverting a significant amount of their containerboard exports to the North American market.

27. Entry and expansion in the containerboard market through the construction of new containerboard mills or machines also are unlikely to occur in a timely manner or on a scale sufficient to undo the competitive harm that the proposed merger would produce. New entry typically requires investing hundreds of millions of dollars in equipment and facilities, obtaining extensive environmental permits, and establishing a reliable distribution system. Competitors are unlikely to build new containerboard mills or install new containerboard machines in response to a small but significant price increase, or do so quickly enough to defeat one.

28. Defendants cannot demonstrate cognizable, merger-specific efficiencies that are sufficient to reverse the proposed merger's anticompetitive effects.

VII. Violation Alleged

29. The United States hereby incorporates paragraphs 1 through 28.

30. International Paper's proposed merger with Temple-Inland would likely substantially lessen competition in the market for containerboard, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

31. Unless enjoined, the proposed merger would likely have the following effects, among others:

a. Competition between International Paper and Temple-Inland for the sale of containerboard would be eliminated;

b. Competition generally in the sale of containerboard in North America would likely be substantially lessened; and

c. Prices for containerboard in North America would likely increase to levels above those that would prevail absent the proposed merger.

VIII. Requested Relief

32. Plaintiff requests that this Court:

a. Adjudge and decree that the proposed merger violates Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Preliminarily and permanently enjoin the defendants from carrying out the proposed merger or from entering into or carrying out any other agreement, understanding, or plan, the effect of which would be to bring the containerboard business of International

Paper and Temple-Inland under common ownership or control;

c. Award plaintiff its costs in this action; and

d. Award plaintiff such other relief as may be just and proper.

Dated: February 10, 2012

Respectfully submitted,

For Plaintiff United States of America:

/s/ Sharis A. Pozen
Sharis A. Pozen (D.C. Bar #446732),
Acting Assistant Attorney General.
/s/ Leslie C. Overton
Leslie C. Overton (D.C. Bar #454493),
Deputy Assistant Attorney General.
/s/ Patricia A. Brink
Patricia A. Brink,
Director of Civil Enforcement.
/s/ Joshua H. Soven
Joshua H. Soven (D.C. Bar #436633),
Chief, Litigation I Section.
/s/ Peter J. Mucchetti
Peter J. Mucchetti (D.C. Bar #463202),
Assistant Chief, Litigation I Section.
/s/ David C. Kelly
David C. Kelly,*
Andrea V. Arias (D.C. Bar #1004270),
Lawrence E. Buterman (D.C. Bar #998738),
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Lauren I. Dubick,
Scott I. Fitzgerald,
Mitchell H. Glende,
Ryan M. Kantor,
Karl D. Knutsen,
John P. Lohrer (D.C. Bar #438939),
Richard S. Martin,
Natalie A. Rosenfelt,
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Julie A. Tenney,
Kevin Yeh,
Attorneys, U.S. Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW, Suite 4100, Washington, DC 20530, Tel.: (202) 353–4211, Fax: (202) 307–5802.

* Attorney of Record

Appendix A—Herfindahl-Hirschman Index

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. See U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *International Paper Company and Temple-Inland Inc.,* Defendants.

Case: 1:12–cv–00227.
Assigned To: Collyer, Rosemary M.
Assign Date: 2/10/2012.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust lawsuit on February 10, 2012, seeking to enjoin Defendant International Paper Company ("International Paper") from acquiring Defendant Temple-Inland Inc. ("Temple-Inland"), and alleging that the merger would likely substantially lessen competition in the market for containerboard in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The loss of competition would likely result in higher containerboard prices and lower containerboard output in the United States.

At the same time the Complaint was filed, the United States filed an Asset Preservation Stipulation and Order and a proposed Final Judgment, which are designed to preserve competition for the production and sale of containerboard in North America. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest one International Paper mill and two Temple-Inland mills that manufacture containerboard. Pursuant to the Asset Preservation Stipulation and Order, International Paper and Temple-Inland must ensure that the assets being divested continue to be operated as ongoing, economically viable, and competitive assets until the divestitures required by the proposed Final Judgment have been accomplished.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. Defendants and the Proposed Transaction

On September 6, 2011, International Paper agreed to acquire Temple-Inland for $4.3 billion. International Paper and Temple-Inland are, respectively, the largest and third-largest producers of containerboard in the United States and Canada (which the containerboard industry and the Complaint refer to collectively as "North America"). Containerboard is the type of paper that is used to make corrugated boxes.

International Paper, a New York corporation headquartered in Memphis, Tennessee, owns and operates 12 containerboard mills and 133 plants that convert containerboard into corrugated boxes ("box plants") in the United States. International Paper controls approximately 26 percent of North American containerboard capacity. In 2010, International Paper's revenues were approximately $25.2 billion, with its North American Industrial Packaging Group, which produces containerboard and corrugated products, accounting for $8.4 billion.

Temple-Inland, a Delaware corporation headquartered in Austin, Texas, owns and operates seven containerboard mills and 53 box plants in the United States. Temple-Inland controls approximately 11 percent of North American containerboard capacity. In 2010, Temple-Inland's annual revenues were approximately $3.8 billion, with its corrugated-packaging business accounting for $3.2 billion. The proposed merger would have created a single firm in control of approximately 37 percent of North American containerboard capacity.

B. Competitive Effects of the Proposed Merger

1. Containerboard Is the Relevant Product Market

The Complaint alleges that containerboard is a relevant product market within the meaning of Section 7 of the Clayton Act. There are two types of containerboard: (1) Linerboard, the paper that forms the inner and outer facings of a corrugated sheet; and (2) medium, the paper that is inserted between the inner and outer linerboards in a wavy, fluted pattern. Linerboard is made from virgin wood fiber, recycled fiber (usually "old corrugated containers," or "OCC"), or a combination of both virgin and recycled fibers. Medium is typically made from recycled fiber, but can also be made from virgin fibers or a combination of recycled and virgin fibers.

Linerboard and medium are relatively undifferentiated products. The linerboard made by one North American producer is substantially the same as the linerboard made by other producers. The medium made by the various producers is also substantially the same.

Although linerboard and medium are typically produced on different machines and have different performance characteristics, it is appropriate to view them as a single relevant product market because (1) containerboard producers and their customers generally regard competition in terms of a single containerboard market, not separate markets for linerboard and medium, and (2) analyzing them as separate products would not significantly alter the market shares or the analysis of the proposed merger's competitive effects.

Producers manufacture containerboard at mills and then ship it to box plants. At box plants, a large machine called a corrugator combines the linerboard and medium into rigid corrugated sheets. Box plants then convert the sheets into corrugated packaging, including corrugated boxes and displays. The work performed at box plants is sometimes divided between separate facilities called sheet feeders (which combine linerboard and medium into corrugated sheets) and sheet plants (which convert the sheets into corrugated boxes). Containerboard typically is the largest cost component of a corrugated box, accounting for a majority of the price.

For box manufacturers, there is no reasonable substitute for containerboard: boxes made from other types of paper lack the required performance characteristics, such as the necessary strength, basis weight, and thickness. Furthermore, for box customers, there is no reasonable substitute for corrugated boxes: other products used to carry and transport goods, such as returnable plastic containers, are typically too expensive or lack the required performance characteristics to serve as a commercially viable alternative.

Therefore, a small but significant increase in the price of containerboard in North America is unlikely to cause a sufficient number of containerboard or corrugated box customers to switch to other types of products such that the price increase would be unprofitable. Accordingly, containerboard is a relevant product market and a "line of commerce" within the meaning of Section 7 of the Clayton Act.

2. North America Is a Relevant Geographic Market

The Complaint alleges that North America is a relevant geographic market for the production and sale of containerboard within the meaning of Section 7 of the Clayton Act. Containerboard produced outside of North America is not a commercially viable substitute for containerboard produced in North America due to higher transportation costs, unfavorable currency exchange rates, lower-quality fiber, and other disadvantages to producers of containerboard outside of North America seeking to import containerboard into North America. Therefore, a small but significant increase in the price of containerboard produced in North America is unlikely to cause a sufficient number of customers of containerboard or corrugated boxes to switch to containerboard produced outside of North America to make such a price increase unprofitable. Accordingly, North America is a relevant geographic market for the production and sale of containerboard and a "section of the country" within the meaning of Section 7 of the Clayton Act.

3. Likely Anticompetitive Effects of the Proposed Merger

The Complaint alleges that the proposed merger would likely substantially lessen competition in the production and sale of containerboard in North America. International Paper controls approximately 26 percent of North American containerboard capacity, and Temple-Inland controls approximately 11 percent. Therefore, the proposed merger would give International Paper control over approximately 37 percent of North American containerboard capacity. Post-merger, the four largest producers would control approximately 74 percent of that capacity. A number of smaller producers, none with a share higher than three percent, account for the remainder of the market.

Using a standard measure of concentration called the Herfindahl–Herschman Index ("HHI"), the proposed merger would significantly raise market concentration and result in a moderately concentrated market, producing an HHI increase of approximately 605 and a post-merger HHI of approximately 2,025. The defendants' combined market share (approximately 37 percent), coupled with the significant increase in market concentration (605), exceed the levels that courts have found to create a presumption that a proposed merger likely would substantially lessen competition.

The proposed merger is likely to cause International Paper to engage in unilateral conduct that would raise the market price of containerboard. The competitive effects analysis described in Section 6.3 of the 2010 Horizontal Merger Guidelines ("Merger Guidelines") is applicable to analyzing the unilateral competitive effects of this transaction. U.S. Dept. of Justice & FTC, *Horizontal Merger Guidelines* § 6.3 (2010) ("Merger Guidelines"). Section 6.3 of the Merger Guidelines provides that "[i]n markets involving relatively undifferentiated products, the Agencies may evaluate whether the merged firm will find it profitable unilaterally to suppress output and elevate the market price. A firm may leave capacity idle, refrain from building or obtaining capacity that would have been obtained absent the merger, or eliminate pre-existing production capabilities."

In the containerboard industry, there is a close relationship between the market price and industry output. All else equal, when industry output grows, the market price of containerboard falls, and as industry output shrinks, the market price of containerboard rises. Because of this close relationship, a containerboard producer can raise the market price of containerboard by strategically reducing output, for example, by idling containerboard machines or closing mills. When a producer significantly reduces output, it loses profits on the output that it removed, but it gains profits (from the resulting higher price) on the output that remains.

A producer's willingness to raise the market price by reducing output depends on its size: As a producer grows larger, it is more likely to profit from strategically reducing output because it will have more sales at the higher price to offset the lost sales on

the reduced output. In contrast, a small producer is unlikely to profit from reducing output because it will not have sufficient remaining sales at the higher price, making the reduction unprofitable.

As alleged in the Complaint, by combining the containerboard capacity of International Paper and Temple-Inland, the proposed merger would significantly expand the volume of containerboard over which International Paper would benefit from a price increase. With that additional volume, International Paper would likely find it profitable to strategically reduce containerboard output, for example, by idling containerboard machines or closing mills. Although International Paper would lose profits on the output that it removed, it would gain even greater profits on the output that remains.

The proposed merger would also likely cause International Paper to engage in parallel accommodating conduct. As described in Section 7 of the Merger Guidelines, "[p]arallel accommodating conduct [involves] situations in which each rival's response to competitive moves made by others is individually rational, and not motivated by retaliation or deterrence nor intended to sustain an agreed-upon market outcome, but nevertheless emboldens price increases and weakens competitive incentives to reduce prices or offer customers better terms."

Due to its additional containerboard volume obtained as a result of the merger, International Paper would benefit more from a price increase after the proposed merger. Thus, if a large rival attempted to raise the market price by reducing output, International Paper would likely accommodate its rival's actions by reducing or not increasing its own output. The rival would thus be likely to increase the market price by reducing output after International Paper and Temple-Inland complete the proposed merger.

4. Neither Supply Responses Nor Entry Would Constrain the Likely Anticompetitive Effects of the Proposed Merger

The Complaint alleges that supply responses from competitors or potential competitors will not prevent the likely anticompetitive effects of the proposed merger. Virtually all existing North American containerboard producers are capacity-constrained and have other operational limitations that would prevent them from significantly expanding output using their existing machines in response to a post-merger increase in the price of containerboard. Further, North American producers are also unlikely to respond to a domestic price increase by diverting a significant amount of their containerboard exports to the North American market.

Entry and expansion in the containerboard market through the construction of new containerboard mills or machines also are unlikely to occur in a timely manner or on a scale sufficient to undo the competitive harm that the proposed merger would produce. New entry typically requires investing hundreds of millions of dollars in equipment and facilities, obtaining extensive environmental permits, and establishing a reliable distribution system. Competitors are unlikely to build new containerboard mills or install new containerboard machines in response to a small but significant price increase, or do so quickly enough to defeat one. Moreover, Defendants cannot demonstrate cognizable, merger-specific efficiencies that are sufficient to reverse the proposed merger's anticompetitive effects.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires Defendants to divest two of Temple-Inland's containerboard mills and all associated mill assets and one of International Paper's containerboard mills and all associated mill assets. Defendants must divest (1) both the Temple-Inland mill in Waverly, Tennessee (the "New Johnsonville Mill"), with an annual containerboard production capacity of approximately 372,900 tons, and the Temple-Inland mill in Ontario, California (the "Ontario Mill"), with an annual containerboard production capacity of approximately 360,200 tons; and (2) either the International Paper mill in Oxnard, California (the "Port Hueneme Mill"), with an annual containerboard production capacity of approximately 210,300 tons, or the International Paper mill in Henderson, Kentucky (the "Henderson Mill"), with an annual containerboard production capacity of approximately 222,400 tons, but not both of those mills. The New Johnsonville Mill, the Ontario Mill, the Port Hueneme Mill, and the Henderson Mill are referred to collectively as the "Divestiture Mills." It will be in Defendants' discretion to decide whether to divest either the Port Hueneme Mill or the Henderson Mill unless a divestiture trustee is appointed pursuant to Section V of the proposed Final Judgment.

Defendants' divestiture of the Divestiture Mills would result in the sale of approximately 943,400 to 955,400 tons of containerboard production capacity to a competitor or competitors of Defendants. Under the proposed Final Judgment, the Divestiture Mills may be sold to one or more buyers, with the approval of the United States in its sole discretion. In addition, Defendants are required to satisfy the United States in its sole discretion that the divested assets will be operated as viable ongoing businesses that will compete effectively in the North American containerboard market.

In evaluating the likely competitive effects of the proposed merger, the United States considered market shares; costs of production; current and historical industry capacity, utilization rates, margins, and market pricing; historical and projected market demand for containerboard; and the likelihood of supply responses to increased containerboard prices. The United States concluded that allowing the merger as proposed would give the merged firm control of a sufficiently large amount of industry capacity that the firm would likely (a) strategically reduce its containerboard output, raising containerboard prices throughout North America, and (b) likely accommodate its large rivals' efforts to raise containerboard prices by reducing their own output, making such price increases more likely. The divestitures required by the proposed Final Judgment will decrease this incentive by reducing the merged firm's capacity and output and transferring that capacity to a competitor or competitors. As a result, the divestitures will reduce the incentive of the merged firm to raise price by reducing output and capacity.

At the option of the Acquirer(s), the proposed Final Judgment requires Defendants to enter into an agreement pursuant to which Defendants shall purchase containerboard produced by the Divestiture Mills that are sold to the Acquirer(s). Under the agreement, the Acquirer(s) shall have the right to require Defendants to purchase up to 100 percent of the volume of containerboard supplied by the particular Divestiture Mill in 2011 to Defendants' box plants or other facilities in the first year of the contract, up to 75 percent of this volume during the second year, and up to 50 percent during the third year. Any such agreement shall have a term of no longer than three years. Similarly, at the option of the Acquirer(s), and upon the approval of the United States, the proposed Final Judgment requires Defendants to provide certain transition

services for up to 12 months as part of the divestiture. Both provisions ensure that the Acquirer(s) will be able to profitably operate the Divestiture Mills, and that they will remain a competitive constraint on Defendants.

Section IV of the proposed Final Judgment requires Defendants to complete the divestiture within 120 days after the filing of the Complaint in this matter with one or more 30-day extensions not to exceed 60 calendar days in total, which extensions shall be granted at the sole discretion of the United States. If Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the proposed Final Judgment provides for the Court to appoint a trustee, upon application of the United States, to accomplish the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all of the costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. If any of the requisite divestitures has not been accomplished at the end of the trustee's term, the trustee and the United States will make recommendations to the Court, which may enter such orders as appropriate to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment also provides that the United States may appoint a monitoring trustee, subject to the approval of the Court, to ensure that Defendants expeditiously comply with all of their obligations and perform all of their responsibilities under the Final Judgment and the Asset Preservation Stipulation and Order. The monitoring trustee shall serve at the cost and expense of Defendants, on customary and reasonable terms and conditions agreed to by the monitoring trustee and the United States.

Pursuant to the Asset Preservation Stipulation and Order, until the divestitures under the proposed Final Judgment have been accomplished, Defendants are required to preserve, maintain, and operate all four Divestiture Mills as ongoing businesses, and are prohibited from taking any action that would jeopardize the divestitures required by the proposed Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Joshua H. Soven, Esq., Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have initiated a civil action in federal district court seeking a judicial order enjoining International Paper's acquisition of Temple-Inland. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition in the production and sale of containerboard in North America.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B).

In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.*, 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11,

2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").[1]

A court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not " 'engage in an unrestricted evaluation of what relief would best serve the public.' " *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that: [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' "prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case").

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see *also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relation to the violations that the United States has alleged in its complaint, and the APPA does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained, "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 10, 2012

Respectfully submitted,

/s/David C. Kelly

David C. Kelly,*
Andrea V. Arias (DC Bar #1004270),
Natalie A. Rosenfelt,
Kevin Yeh,

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); H.R. Rep. No. 93–1463, at 4 (1974), *as reprinted in* 1974 U.S.C.C.A.N. 6535, 6539 ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, this is the approach that should be utilized.").

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *International Paper Company and Temple-Inland Inc., Defendants.*

[Proposed] Final Judgment

Whereas, Plaintiff United States of America, filed its Complaint on February 10, 2012, and Plaintiff and Defendants International Paper Company ("International Paper") and Temple-Inland Inc. ("Temple-Inland") (collectively "Defendants"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" means the person, persons, entity, or entities to whom Defendants divest some or all of the Divestiture Assets.

B. "Containerboard" means linerboard and medium, the paper that is used to make corrugated boxes.

C. "Divestiture Assets" means the Divestiture Mills and all assets relating to the Divestiture Mills, including:

(1) All tangible assets necessary to operate, used in or for, or devoted to a Divestiture Mill, including, but not limited to, assets relating to research and development activities; all manufacturing equipment, tooling and fixed assets, real property (leased or owned), personal property, inventory, containerboard reserves, information technology systems, office furniture, materials, supplies, docking facilities, warehouses and storage facilities, and other tangible property and all assets used exclusively in connection with the Divestiture Mills; all licenses, permits, and authorizations issued by any governmental organization relating to the Divestiture Mills; all contracts, teaming arrangements, agreements, leases (including renewal rights), commitments, certifications, and understandings, relating to the Divestiture Mills, including supply or purchase agreements; all customer lists, contracts, accounts, and credit records; all interests in, and contracts relating to, power generation; and all repair and performance records and all other records relating to the Divestiture Mills; and

(2) All intangible assets necessary to operate, used in or for, or devoted to a Divestiture Mill, including, but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, copyrights, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, environmental studies and assessments, design tools and simulation capability, all manuals and technical information Defendants provide to their employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Divestiture Mills, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

D. "Divestiture Mills" means the Defendants' containerboard mills in the following locations:

(1) Temple-Inland's containerboard mill located at 2877 Scepter Road, Waverly, Tennessee 37185 (the "New Johnsonville Mill");

(2) Temple-Inland's containerboard mill located at 5110 East Jurupa Street, Ontario, California 91761 (the "Ontario Mill"); and

(3) Either International Paper's containerboard mill located at 5936 Perkins Road, Oxnard, California 93033 (the "Port Hueneme Mill") or International Paper's containerboard mill located at 1500 Commonwealth Drive, Henderson, Kentucky 42420 (the "Henderson Mill").

E. "Divestiture Trustee" means the trustee selected by the United States and appointed by the Court pursuant to Section V of this Final Judgment.

F. "International Paper" means Defendant International Paper Company, a New-York corporation with its headquarters in Memphis, Tennessee, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. "Monitoring Trustee" means the monitor selected by the United States pursuant to Section IX of this Final Judgment.

H. "Temple-Inland" means Defendant Temple-Inland, Inc., a Delaware corporation with its headquarters in Austin, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to each Defendant and all persons in active concert or participation with any Defendant who receives actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV or V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser(s) to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 120 calendar days after the filing of the Complaint in this matter

or five calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion. To comply with this requirement, Defendants must divest (1) both the New Johnsonville Mill and the Ontario Mill, and (2) either the Port Hueneme Mill or the Henderson Mill, but not both mills. Unless a Divestiture Trustee is appointed pursuant to Section V of this Final Judgment, Defendants shall have the discretion to decide whether to divest either the Port Hueneme Mill or the Henderson Mill. The United States, in its sole discretion, may agree to one or more 30-day extensions of the 120-day time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person who inquires about a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any prospective Acquirer.

C. Defendants shall provide prospective Acquirers and the United States with information relating to the personnel involved in the management, production, operation, and sales activities relating to the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ or contract with any Defendant employee whose primary responsibility is production, operations, or sales at the Divestiture Mills. Nor shall Defendants interfere with any negotiations by the Acquirer(s) to employ or contract with any of the Defendants' sales force whose responsibilities include sales of containerboard produced by the Divestiture Mills to third-party customers.

D. Defendants shall waive all non-compete agreements for any current or former employee whom the Acquirer(s) employ(s) with relation to the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to (1) have reasonable access to personnel; (2) make inspections of the physical facilities; (3) have access to any and all environmental, zoning, and other permit documents and information; and (4) have access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer(s) that the Divestiture Assets will be operational on the date of sale, that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. At the option of the Acquirer(s) and upon approval by the United States, in its sole discretion, Defendants shall enter into a transition services agreement based upon commercially reasonable terms and conditions. Such an agreement may not exceed 12 months from the date of divestiture. Transition services may include information technology support, information technology licensing, computer operations, data processing, logistics support, and such other services as reasonably necessary to operate the Divestiture Assets. Defendants shall designate employees, other than Defendants' senior managers, to implement any such transition services agreement and shall establish, implement and maintain procedures and take such other steps that are reasonably necessary to prevent such employees from disclosing any confidential, proprietary, or business sensitive information of the Acquirer(s) to any other employee of Defendants, and to prevent such employees from using such information except as necessary to implement the transition services agreement.

I. Unless the United States otherwise consents in writing, any divestiture of a mill pursuant to Section IV, or by the Divestiture Trustee appointed pursuant to Section V of this Final Judgment, shall include the mill and all assets relating to it, as defined in Section II.C, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the divestiture will achieve the purposes of this Final Judgment and that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the production and sale of containerboard. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the production and sale of containerboard; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability to unreasonably raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the ability of an Acquirer to compete effectively.

J. As part of a divestiture, and at the option of the Acquirer(s), Defendants shall negotiate a transitional agreement or transitional agreements to purchase containerboard on commercially reasonable terms and conditions from the Divestiture Mills that are sold to the Acquirer(s). Such agreement(s) shall have a term of no longer than three (3) years. The Acquirer of a Divestiture Mill shall have the right to require Defendants to purchase up to 100 percent of the volume of containerboard supplied by the particular Divestiture Mill in 2011 to Defendants in the first year of the contract, up to 75 percent of this volume during the second year, and up to 50 percent during the third year. Defendants may agree to purchase more containerboard produced by the Divestiture Mill(s) than the amounts specified. The foregoing limitations and requirements do not affect Defendants' ability to (1) maintain or enter into current or future ordinary-course containerboard trade agreements with the Acquirer(s) or (2) enter into ordinary-course containerboard supply agreements with the Acquirer(s) after the end of the three-year term of the purchase agreement(s) described in this sub-paragraph.

V. Appointment of Trustee

A. If Defendants have not divested some or all of the Divestiture Assets ordered by Section IV(A) of this Final Judgment within the time period

specified in Section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of any Divestiture Mills that Defendants have not divested (the "remaining Divestiture Assets") in the following manner:

(1) If Defendants have not divested the New Johnsonville Mill and/or the Ontario Mill, the Divestiture Trustee will divest the mill(s).

(2) If Defendants have not divested the Port Hueneme Mill and have not divested the Henderson Mill, the Divestiture Trustee must divest one of these mills, but not both mills. The Divestiture Trustee shall have the discretion to decide whether to divest the Port Hueneme Mill or the Henderson Mill. The Divestiture Trustee shall make this determination based on the price and terms of the divestiture and the speed with which it can be accomplished, but timeliness is paramount.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the remaining Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within 10 calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the remaining Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of remaining Divestiture Assets, and Defendants shall develop financial and other information relevant to the remaining Divestiture Assets as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the remaining Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the remaining Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth: (1) The Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent the report contains information that the Divestiture Trustee deems confidential, the report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

A. Within two business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within 15 calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer(s). Defendants and the Divestiture Trustee shall furnish to the United States any additional information requested within 15 calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within 30 calendar days after receipt of the notice, or within 20 calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it approves or objects to the proposed

divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Asset Preservation

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Appointment of Monitoring Trustee

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by this Court and shall have such powers as this Court deems appropriate. Subject to Section IX(D) of this Final Judgment, the Monitoring Trustee may hire any consultants, accountants, attorneys, or other persons reasonably necessary in the Monitoring Trustee's judgment. These individuals shall be solely accountable to the Monitoring Trustee.

C. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within 10 calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

D. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall serve, without bond or other security, at the cost and expense of Defendants, on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

E. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

F. Defendants shall assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

G. After its appointment, the Monitoring Trustee shall file monthly reports with the United States and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

H. The Monitoring Trustee shall serve until the divestiture of all of the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Final Judgment and any transitional or purchase agreements described in Sections IV(H) and (J) of this Final Judgment have expired.

I. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently, the United States may appoint a substitute Monitoring Trustee in the same manner as provided in this Section.

J. The Monitoring Trustee appointed pursuant to this Final Judgment may be the same person or entity appointed as a Divestiture Trustee pursuant to Section V of this Final Judgment.

X. Affidavits

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on the information, shall be made within 14 calendar days of receipt of such affidavit.

B. Within 20 calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within 15 calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of

the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy or, at the option of the United States, to require Defendants to provide hard copy or electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested, including, but not limited to, any transitional service, supply, or purchase agreements entered into between the Acquirer(s) and the Defendants pursuant to Section IV(H) or (J) of this Final Judgment.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants 10 calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire 10 years from the date of its entry.

XV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____

United States District Judge.

[FR Doc. 2012–3975 Filed 2–21–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0043]

Agency Information Collection Activities; Existing Collection, Comments Requested: the Voluntary Appeal File (VAF) Brochure

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ) FBI Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 216, on November 8, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 23, 2012. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), § 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Approval of an Existing Collection

(2) *Title of the Forms:* Voluntary Appeal File

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0043.

Sponsor: Criminal Justice Information Services (CJIS) Division of the FBI, Department of Justice (DOJ).

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: Any individual requesting entry into the Voluntary Appeal File (VAF) of the FBI Criminal Justice Information Services (CJIS) Division's

National Instant Criminal Background Check System (NICS) Section.

Brief Abstract: Under 28 CFR, Part 25.9(b)(1), (2), and (3), the NICS must destroy all identifying information on allowed transactions within 24 hours of the Federal Firearms Licensee (FFL) being notified of the transaction's proceed status. If a potential purchaser is delayed or denied a firearm then successfully appeals the decision, the NICS Section cannot retain a record of the overturned appeal or the supporting documentation. If the record cannot be updated, the purchaser continues to be delayed or denied, and if that individual appeals the decision, the documentation must be resubmitted for every subsequent purchase. As such, the VAF was mandated to be created and maintained by the NICS Section for the purpose of preventing future lengthy delays or erroneous denials of a firearm transfer. An individual wishing to request entry into the VAF may obtain a VAF brochure from the NICS Section, an FFL, or the NICS Section's Web site: *http://www.fbi.gov/about-us/cjis/nics/nics.*

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that annually 7,542 individuals will request entry into the VAF. It takes an average of 5 minutes to read and complete all areas of the application, an estimated 2 hours for the process of fingerprinting including travel, and 25 minutes to mail the form for a total of 2.5 hours estimated burden to the respondent.

(5) *An estimate of the total public burden (in hours) associated with the collection:* The number of persons requesting entry into the VAF is estimated to be 7,542 individuals annually. The time it takes each individual to complete the process is 2.5 hours. The total public burden hours are 7,542 respondents multiplied by 2.5 hours which equals 18,855 total burden hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–3999 Filed 2–21–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) Docket No. 1583]

Meeting of the Department of Justice's (DOJ's) National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of DOJ's National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee to discuss various issues relating to the operation and implementation of NMVTIS.

DATES: The meeting will take place on Wednesday, March 28, 2012, from 8:30 a.m. to 4:30 p.m. ET.

ADDRESSES: The meeting will take place at the Office of Justice Programs (OJP), 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Todd Brighton, Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531; Phone: (202) 616–3879 [**note:** this is not a toll-free number]; Email: *Todd.Brighton@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Members of the public who wish to attend this meeting must register with Mr. Brighton at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Please bring photo identification and allow extra time prior to the meeting. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

Anyone requiring special accommodations should notify Mr. Brighton at least seven (7) days in advance of the meeting.

Purpose

The NMVTIS Federal Advisory Committee will provide input and recommendations to the Office of Justice Programs (OJP) regarding the operations and administration of NMVTIS. The primary duties of the NMVTIS Federal Advisory Committee will be to advise the Bureau of Justice Assistance (BJA) Director on NMVTIS-related issues, including but not limited to: Implementation of a system that is self-sustainable with user fees; options for alternative revenue-generating opportunities; determining ways to enhance the technological capabilities of the system to increase its flexibility; and options for reducing the economic burden on current and future reporting entities and users of the system.

Todd Brighton,

NMVTIS Enforcement Coordinator, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 2012–3997 Filed 2–21–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[Funding Opportunity Number: SGA/DFA PY 11–01]

Notice of Funding Opportunity and Solicitation for Grant Applications (SGA) for the Workforce Data Quality Initiative

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications.

SUMMARY: Through this notice, the Department of Labor's Employment and Training Administration (ETA) announces the availability of approximately $12.1 million from funds made available through the Fiscal Year (FY) 2011 DOL appropriation for Training and Employment Services for grants to State Workforce Agencies (SWA) to develop the Workforce Data Quality Initiative (WDQI). ETA expects to award approximately twelve grants of up to $1 million each for a 36 month period of performance. This performance period includes all necessary implementation and start-up activities. Eligible applicants for this solicitation are those SWAs within the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands that were not recipients of a round one WDQI grant (as a result of solicitation SGA/DFA PY 09–10). Grants awarded will provide SWAs the opportunity to develop and use State workforce longitudinal administrative data systems. These State longitudinal data systems will, at a minimum, include information on programs that provide training, employment services, and unemployment insurance. These systems must also be linked longitudinally at the individual level to allow for analysis which will lead to

enhanced opportunity for program evaluation and lead to better information for customers and stakeholders of the workforce system. In addition, these systems must connect with the U.S. Department of Education's (ED) Statewide Longitudinal Data Systems (SLDS) databases. Where such longitudinal systems do not exist or are incipient, WDQI grant assistance may be used to design and develop workforce data systems that are longitudinal and which are designed to link with relevant education data or longitudinal education data systems. WDQI grant assistance may also be used to improve upon and more effectively use existing State longitudinal systems.

The complete SGA and any subsequent SGA amendments, in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov*. The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is April 19, 2012.

FOR FURTHER INFORMATION CONTACT: L. Gerald Tate, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3703. The Grant Officer for this SGA is Latifa Jeter.

Dated: Signed February 14, 2012 in Washington, DC.

Eric D. Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2012–3982 Filed 2–21–12; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Operations & Regulations Committee will meet February 29, 2012. The meeting will commence at 3:30 p.m., Eastern Standard Time, and will continue until the conclusion of the Committee's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters Building, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend but wish to listen to the public proceeding may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time, the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately "Mute" your telephone.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of minutes of the Committee's meeting of January 19, 2012.
3. Consider and act on Committee members' self-evaluations for 2011, the Committee's goals for 2012 and possible amendment to the Committee's Charter.
4. Consider and act on notice and comment, publication requirement of the LSC Act and Board review of LSC promulgations:
   - Mattie Cohan, Office of Legal Affairs.
5. Staff report on LSC Continuity of Operations Plan.
6. Public comment.
7. Consider and act on other business.
8. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov*.

Accessibility: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: February 17, 2011.

Mattie Cohan,

Senior Assistant General Counsel.

[FR Doc. 2012–4259 Filed 2–17–12; 3:05 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Centers for Chemical Innovation (CCI) 2012 Phase II Full Proposal Panel Review (1191).

Date and Time:

Monday, March 5, 2012 (8 a.m.–5:30 p.m.).
Tuesday, March 6, 2012 (8 a.m.–5 p.m.).
Wednesday, March 7, 2012 (8 a.m.–5 p.m.).
Thursday, March 8, 2012 (8 a.m.–5 p.m.).
Friday, March 9, 2012 (8 a.m.–12 p.m.).

Place: Arlington, Virginia.

Type of Meeting: Partially-Opened.

Contact Person for More Information: Katharine Covert, Program Director, Division of Chemistry, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 703–292–4950.

Purpose of Meeting:

To review and evaluate four center proposals as part of the selection process for a Phase II award.

Agenda:

Monday, March 5, 2012

8 a.m.–9:15 a.m. Closed-Executive Session
9:15 a.m.–12:15 p.m. Open-CEOP Center & Poster Presentations
12:15 p.m. –1:30 p.m. Closed-Executive Session
1:30 p.m.–2:45 p.m. Open-Center Q&A
2:45 p.m.–5:30 p.m. Closed-Executive Session

Tuesday, March 6, 2012

8 a.m.–8:30 a.m. Closed-Executive Session
8:30 a.m.–11:30 p.m. Open-CENECI Center & Poster Presentations
11:30 p.m. –1 p.m. Closed-Executive Session
1 p.m.–2:15 p.m. Open-Center Q&A
2:15 p.m.–5 p.m. Closed-Executive Session

Wednesday, March 7, 2012

8 a.m.–8:30 a.m. Closed-Executive Session
8:30 a.m.–11:30 p.m. Open-CSCHF Center & Poster Presentations
11:30 p.m. –1 p.m. Closed-Executive Session
1 p.m.–2:15 p.m. Open-Center Q&A
2:15 p.m.–5 p.m. Closed-Executive Session

Thursday, March 8, 2012

8 a.m.–8:30 a.m. Closed-Executive Session

8:30 a.m.–11:30 p.m. Open-CMS Center & Poster Presentations
11:30 p.m. –1 p.m. Closed-Executive Session
1 p.m.–2:15 p.m. Open-Center Q&A
2:15 p.m.–5 p.m. Closed-Executive Session

Friday, March 9, 2012

8 a.m.–12 p.m. Closed

Reason for Closing: The meeting is partially closed to the public because the Panel will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 16, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–4054 Filed 2–21–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Programs and Plans Task Force on Unsolicited Mid-Scale Research, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Monday, February 27; 12:30 p.m.–1:30 p.m. EST.

SUBJECT MATTER: (1) Co-Chair's opening remarks; (2) Discussion of the final report of the NSB Task Force on Unsolicited Mid-Scale Research; and (3) Update on data gathering activities.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Matthew B. Wilson, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2012–4244 Filed 2–17–12; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Executive Committee, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business as follows:

DATE AND TIME: Monday, February 27, 2012 at 2 to 2:30 p.m., EST.

SUBJECT MATTER: Discuss and vote on the NSF's recommendation to increase the amount and duration of the Alan T. Waterman Award.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting). The point of contact for this meeting is: Kim Silverman, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–7000.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2012–4247 Filed 2–17–12; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2012–0002].

DATE: Weeks of February 20, 27, March 5, 12, 19, 26, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 20, 2012

Wednesday, February 22, 2012

8:55 a.m.—Affirmation Session (Public Meeting) (Tentative)
a. Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Pilgrim Watch's Requests for Hearing on New Contentions Relating to Fukushima Accident) Sept. 8, 2011 (Sept. 23, 2011) (Tentative)
b. Crow Butte Resources, Inc. (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), Docket No. 40–8943, Memorandum (Bringing Matter of Concern to Commission's Attention) (Tentative)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

9 a.m.—Briefing on Fort Calhoun (Public Meeting) (Contact: Jeff Clark, 817–860–8147).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of February 27, 2012—Tentative

Tuesday, February 28, 2012

9:30 a.m.—Briefing on the Threat Environment Assessment (Closed—Ex. 1)

Week of March 5, 2012—Tentative

There are no meetings scheduled for the week of March 5, 2012.

Week of March 12, 2012—Tentative

There are no meetings scheduled for the week of March 12, 2012.

Week of March 19, 2012—Tentative

There are no meetings scheduled for the week of March 19, 2012.

Week of March 26, 2012—Tentative

Tuesday, March 27, 2012

9 a.m.—Briefing on License Renewal for Research and Test Reactors (Public Meeting) (Contact: Jessie Quichocho, 301–415–0209)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

By a vote of 4–0 on February 10, 2012, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that a Discussion of Management and Personnel issues be held on February 13, 2012, with less than one week notice to the public. The meeting was held on February 13, 2012.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: February 16, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–4226 Filed 2–17–12; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0295]

Methodology for Low Power/Shutdown Fire PRA

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG/CR; extension for public comment period.

SUMMARY: On December 29, 2011 (76 FR 81998), the U.S. Nuclear Regulatory Commission (NRC) published in the **Federal Register** a request for public comment on Draft NUREG/CR–7114, Revision 0, "Methodology for Low Power/Shutdown Fire PRA." In response to request from members of the public, the NRC is extending the public comment period until April 18, 2012.

DATES: The comment period has been extended and expires on April 18, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0295 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 of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0295. Address questions about NRC dockets to Carol Gallagher (301) 492–3668; email *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* 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, or by fax to RADB at (301) 492–3446.
- *Fax comments to:* RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Felix E. Gonzalez, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 251–7596, email: *Felix.Gonzalez@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC's 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 Agency-wide Documents Access and Management System (ADAMS):* Publicly available document 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 email to *pdr.resource@nrc.gov.* The draft NUREG is available electronically under ADAMS Accession No. ML11353A377. The draft NUREG will also be accessible through the NRC's public site under draft NUREGs for comment.
- *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–2011–0295.

Discussion

The draft NUREG presents a probabilistic risk assessment (PRA) method for quantitatively analyzing fire risk in commercial nuclear power plants during low power operation and shutdown (LPSD) conditions, including the determination of core damage

frequency (CDF) and large early release frequency (LERF). Future updates are expected to be made to this document as experience is gained with LPSD quantitative risk analyses of both internal events and fires.

The NRC developed this LPSD fire quantitative risk method so analysts would be able to use a quantitative approach for estimating fire risk during LPSD conditions. While current LPSD safety analyses for fires performed under National Fire Protection Association Standard 805 (NFPA 805) focus on qualitative, defense-in-depth methods, it is envisioned that applications in the future may evolve to a more quantitative method.

Dated at Rockville, Maryland, this 14th day of February, 2012.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2012–4096 Filed 2–21–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–16; Order No. 1230]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into an additional International Business Reply Service contract. This document invites public comments on the request and addresses several related procedural steps.

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.

DATES: *Comments are due:* February 22, 2012.

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:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On February 13, 2012, the Postal Service filed a notice announcing that it has entered into an additional International Business Reply Service (IBRS) contract.[1] The Postal Service asserts that the instant contract is functionally equivalent to the IBRS 3 baseline contract originally filed in Docket Nos. MC2009–14 and CP2009–20 and supported by Governors' Decision No. 08–24 attached to the Notice (IBRS 3 baseline contract). *Id.* Attachment 3. The Notice explains that Order No. 684, which established IBRS Competitive Contracts 3 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1–2. Additionally, the Postal Service claims that the instant contract is the successor to the instrument that the Commission found to be eligible for inclusion in the IBRS Competitive Contract 3 product in Docket Nos. MC2011–21 and CP2011–59, on behalf of the same customer as in Docket No. CP2011–59. *Id.* at 3.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The Postal Service also contends that the instant contract is in compliance with Order No. 178. The instant contract is intended to be a successor to the IBRS Contract submitted in Docket Nos. MC2011–21 and CP2011–59, which is scheduled to expire on February 29, 2012. *Id.* at 2. The instant contract will remain in effect until March 1, 2014, unless termination of the agreement occurs earlier. *Id.* It may, however, be terminated by either party upon 30 days' written notice. *Id.* Attachment 1 at 10.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the contract and applicable annexes;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–24, which establishes prices and classifications for IBRS contracts, a description of applicable IBRS contracts, formulas for prices, an analysis of the formulas, a certification as to the formulas for prices offered under applicable IBRS contracts, and certification of the Governors' vote; and
- Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contract and file supporting documents under seal.

The Notice enumerates the reasons why the instant IBRS Competitive Contract allegedly fits within the Mail Classification Schedule language for IBRS Competitive Contract 3. The Postal Service identifies general contract terms that distinguish the instant contract from the IBRS 3 baseline contract, such as: An additional sentence in Article 15 stating that the Postal Service may be required to file information in connection with the contract in other Commission dockets; and an additional Article 30 concerning Intellectual Property, Co-Branding, and Licensing. *Id.* at 5. The Postal Service states that the differences affect neither the fundamental service that the Postal Service is offering nor the fundamental structure of the contract. *Id.*

The Postal Service concludes that its filing demonstrates that the new IBRS contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the IBRS 3 baseline contract filed in Docket Nos. MC2011–21 and CP2011–59. *Id.* at 6. Therefore, it requests that the instant contract be included within the IBRS Competitive Contract 3 (MC2011–21) product. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2012–16 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3633 and 39 CFR 3015.5. Comments are due no later than February 22, 2012. The public portions of this filing can be accessed via the Commission's Web site, *http://www.prc.gov*.

The Commission appoints James F. Callow to serve as Public Representative in the captioned proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2012–16 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than February 22, 2012.

[1] Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 13, 2012 (Notice).

3. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–3984 Filed 2–21–12; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c2–8; OMB Control No. 3235–0481; SEC File No. 270–421.

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 15c2–8 (17 CFR 240.15c2–8). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval—Rule 15c2–8 (17 CFR 240.15c2–8)—Delivery of Prospectus.

Rule 15c2–8 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act") requires broker-dealers to deliver preliminary and/or final prospectuses to certain people under certain circumstances. In connection with securities offerings generally, including initial public offerings (IPOs), the rule requires broker-dealers to take reasonable steps to distribute copies of the preliminary or final prospectus to anyone who makes a written request, as well as any broker-dealer who is expected to solicit purchases of the security and who makes a request. In connection with IPOs, the rule requires a broker-dealer to send a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale (generally, this means any person who is expected actually to purchase the security in the offering) at least 48 hours prior to the sending of such confirmation. This requirement is sometimes referred to as the "48 hour rule."

Additionally, managing underwriters are required to take reasonable steps to ensure that all broker-dealers participating in the distribution of or trading in the security have sufficient copies of the preliminary or final prospectus, as requested by them, to enable such broker-dealer to satisfy their respective prospectus delivery obligations pursuant to Rule 15c2–8, as well as Section 5 of the Securities Act of 1933.

Rule 15c2–8 implicitly requires that broker-dealers collect information, as such; the collection facilitates compliance with the rule. There is no requirement to submit collected information to the Commission. In order to comply with the rule, broker-dealers participating in a securities offering must keep accurate records of persons who have indicated interest in an IPO or requested a prospectus, so that they know to whom they must send a prospectus.

The Commission estimates that broker-dealers will spend a total of 74,010 hours complying with the collection of information required by the rule. The Commission estimates that the total number of responses required by the rule is 6,909. The Commission estimates that the total annualized cost burden (copying and postage costs) is $15,014,400 ($12,300,000 for IPOs + $2,714,400 for other offerings).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid 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 email to: *PRA_Mailbox@sec.gov.*

Dated: February 15, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4009 Filed 2–21–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 23, 2012 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 23, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: February 16, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–4153 Filed 2–17–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66406; File No. SR–ISE–2012–07]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Complex Orders Executed on the Exchange

February 16, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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

The ISE is proposing to amend fees for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses a per contract transaction fee to market participants that add or remove liquidity in the Complex Order Book ("maker/taker fees") in symbols that are in the Penny Pilot program. Included therein is a subset of 101 symbols that are assessed a slightly higher taker fee (the "Select Symbols").[3] Specifically, the Exchange charges ISE market maker orders,[4] firm proprietary orders and Customer (Professional Orders)[5] $0.10 per contract for providing liquidity on the Complex Order Book and $0.30 per contract ($0.32 per contract in the Select Symbols) for taking liquidity from the Complex Order Book. ISE market makers who take liquidity from the Complex Order Book by trading with orders that are preferenced to them are charged $0.28 per contract ($0.30 per contract in the Select Symbols). Non-ISE Market Makers[6] are currently charged $0.20 per contract for providing liquidity and $0.35 per contract ($0.36 per contract in the Select Symbols) for taking liquidity from the Complex Order Book. Priority Customer orders are not charged a fee for trading in the Complex Order Book and receive a rebate of $0.25 per contract ($0.30 per contract in the Select Symbols) when those orders trade with non-customer orders in the Complex Order Book.

The Exchange also recently adopted fees for complex orders in two of the most actively-traded index option products, the NASDAQ 100 Index option ("NDX") and the Russell 2000 Index option ("RUT").[7] Specifically, the Exchange charges ISE market maker orders, firm proprietary orders and Customer (Professional Orders) $0.25 per contract for providing liquidity on the Complex Order Book in NDX and RUT and $0.70 per contract for taking liquidity from the Complex Order Book in NDX and RUT. Non-ISE Market Makers are charged $0.25 per contract for providing liquidity and $0.75 per contract for taking liquidity from the Complex Order Book in NDX and RUT. ISE market makers who remove liquidity from the Complex Order Book in NDX and RUT by trading with orders that are preferenced to them are charged $0.68 per contract. Priority Customer orders are not charged a fee for trading in the Complex Order Book in NDX and RUT and receive a rebate of $0.50 per contract when those orders trade with non-Priority Customer orders in the Complex Order Book in NDX and RUT.

Further, pursuant to Securities and Exchange Commission ("SEC") approval, the Exchange allows market makers to enter quotations for complex order strategies in the Complex Order Book.[8] Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange recently amended fees that apply to transactions in the Complex Order Book in the following three symbols: XOP, XLB and EFA.[9] Specifically, the Exchange amended its maker fees for complex orders in these three symbols when these orders interact with Priority Customers.[10] In SR–ISE–2011–81, the Exchange increased its maker fee from $0.10 per contract to $0.30 per contract in XOP ($0.32 per contract in XLB and EFA) for ISE market maker orders, firm proprietary orders, and Customer (Professional Orders) when these orders interact with Priority Customer orders. The Exchange also increased its maker fee from $0.20 per contract to $0.30 per contract in XOP ($0.32 per contract in XLB and EFA) for Non-ISE Market Makers orders when these orders interact with Priority Customer orders. The Exchange did not make any change to fees for Priority Customer orders that trade in the Complex Order Book.

Further, for Priority Customer complex orders in XOP, the Exchange currently provides a rebate of $0.25 per contract ($0.30 per contract for XLB and EFA) when these orders trade with non-Priority Customer orders in the Complex Order Book.

Further, the Exchange provides ISE market makers with a two cent discount when trading against orders that are preferenced to them. Prior to SR–ISE–2011–81, this discount was only applicable when ISE Market Makers removed liquidity from the Complex Order Book. Pursuant to SR–ISE–2011–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Select Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The term "market makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. *See* ISE Rule 100(a)(25).

[5] The term "Professional Order" means an order that is for the account of a person or entity that is not a Priority Customer. *See* ISR [sic] Rule 100(a)(37C).

[6] The term "Non-ISE Market Maker" means a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 (the "Act") registered in the same options class on another options exchange. *See* Schedule of Fees, page 4.

[7] *See* Securities Exchange Act Release No. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84).

[8] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR–ISE–2011–39).

[9] *See* Securities Exchange Act Release No. 65958 (December 15, 2011), 76 FR 79236 (December 21, 2011) (SR–ISE–2011–81). The Exchange notes that XOP is currently in the Penny Pilot program and XLB and EFA are currently Select Symbols.

[10] The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account. *See* ISE Rule 100(a)(37A).

81, the Exchange began to provide this fee discount when ISE Market Makers added or removed liquidity from the Complex Order Book. As a result, the Exchange currently provides this fee discount when ISE market makers add or remove liquidity from the Complex Order Book in XOP, XLB and EFA. Specifically, ISE market makers that add or remove liquidity in XLB and EFA in the Complex Order Book are charged $0.30 per contract ($0.28 per contract in XOP) when trading with orders that are preferenced to them.

Additionally, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism,[11] Price Improvement Mechanism[12] and Solicited Order Mechanism.[13] This rebate currently applies to all complex orders in symbols that are subject to the Exchange's maker/taker fees. For the Facilitation and Solicited Order Mechanisms, the rebate is currently $0.15 per contract. For the Price Improvement Mechanism, the rebate is currently $0.25 per contract. Accordingly, a per contract rebate at the current levels currently applies to those contracts in XOP, XLB, and EFA that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism.

The Exchange now proposes to extend the fees for complex orders adopted in SR–ISE–2011–81 to the following additional seven symbols: AA, ABX, MSFT, MU, NVDA, VZ, and WFC.[14] The Exchange proposes to expand the pricing structure and fees applicable to these orders in a manner that is gradual and measured. For that reason, the Exchange selected symbols that have moderate trading activity. In this case, each of the seven symbols selected by the Exchange has an average daily trading volume in complex orders of 500 contracts to 10,000 contracts on the Exchange.

Specifically, the Exchange proposes to increase its maker fee from $0.10 per contract to $0.32 per contract in AA, ABX, MSFT, MU, NVDA, VZ, and WFC for ISE market maker orders, firm proprietary orders, and Customer (Professional Orders) when these orders interact with Priority Customer orders. The Exchange proposes to increase its maker fee from $0.20 per contract to $0.32 per contract in AA, ABX, MSFT, MU, NVDA, VZ, and WFC for Non-ISE Market Makers orders when these orders interact with Priority Customer orders. The Exchange does not propose any change to fees for Priority Customer orders that trade in the Complex Order Book.

Further, the Exchange provides ISE market makers with a two cent discount when trading against orders that are preferenced to them. Accordingly, the Exchange currently provides this fee discount when ISE Market Makers add or remove liquidity from the Complex Order Book in AA, ABX, MSFT, MU, NVDA, VZ, and WFC.[15] Specifically, ISE market makers that add or remove liquidity in AA, ABX, MSFT, MU, NVDA, VZ, and WFC in the Complex Order Book are charged $0.30 per contract when trading with orders that are preferenced to them.

Further, for Priority Customer complex orders in AA, ABX, MSFT, MU, NVDA, VZ, and WFC, the Exchange currently provides a rebate of $0.30 per contract when these orders trade with non-Priority Customer orders in the Complex Order Book. The Exchange does not propose any change to this rebate.

Finally, as noted above, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism. This rebate currently applies to all complex orders in symbols that are subject to the Exchange's maker/taker fees. For the Facilitation and Solicited Order Mechanisms, the rebate is currently $0.15 per contract. For the Price Improvement Mechanism, the rebate is currently $0.25 per contract. Accordingly, a per contract rebate at the current levels currently applies to those contracts in AA, ABX, MSFT, MU, NVDA, VZ, and WFC that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism. The Exchange does not propose any change to this rebate.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(4) of the Act[17] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying AA, ABX, MSFT, MU, NVDA, VZ, and WFC in the Complex Order Book.

The Exchange believes that increasing the fees applicable to orders executed in the Complex Order Book when trading against Priority Customers in AA, ABX, MSFT, MU, NVDA, VZ, and WFC is appropriate given the new functionality that allows market makers to quote in the Complex Order Book. Additionally, the Exchange's fees remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. Specifically, the Exchange believes that its proposal to assess a 'make' fee of $0.32 per contract for AA, ABX, MSFT, MU, NVDA, VZ, and WFC when orders in these symbols interact with Priority Customers is reasonable and equitable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the 'make' fee for a broker/dealer complex order in MSFT when trading against a Priority Customer at NASDAQ OMX PHLX ("PHLX") is $0.20 per contract[18] while the same order that is electronically delivered at the Chicago Board Options Exchange ("CBOE") is $0.45 per contract.[19] Furthermore, one of the primary goals of this fee change, as well as the fees adopted in SR–ISE–2011–81, is to maintain the attractive and competitive economics for Priority Customer

[11] *See* Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

[12] *See* Exchange Act Release No. 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43). The Exchange subsequently increased this rebate to $0.25 per contract. *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

[13] *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

[14] The Exchange notes that AA, ABX, MSFT, MU, NVDA, VZ, and WFC are currently Select Symbols.

[15] ISE acknowledged that it does not currently provide this fee discount for the seven symbols included in this proposal. Instead, the proposal establishes this discount for these seven symbols. Telephone conversation among Boris Ilyevsky, Managing Director, ISE; Samir Patel, Assistant General Counsel, ISE; Victoria Crane, Assistant Director, Commission; Yvonne Fraticelli, Special Counsel, Commission; and Kathleen Gross, Counsel, Commission on February 13, 2012.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] *See* PHLX Fee Schedule, Section I, Part B., at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf*.

[19] *See* CBOE Fees Schedule, Section 1.VI. at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*.

complex orders, while introducing an enhancement to the way complex orders trade on the Exchange.

The Exchange also believes that it is reasonable and equitable to provide a two cent discount to ISE market makers on preferenced orders because this will provide an incentive for market makers to quote in the Complex Order Book. The Exchange believes that it is reasonable and equitable to continue to provide rebates for Priority Customer complex orders because paying a rebate will continue to attract additional order flow to the Exchange and thereby create liquidity that ultimately will benefit all market participants who trade on the Exchange.

The Exchange believes that it is reasonable and equitable to charge the fees proposed herein as they are already applicable to complex orders in XOP, XLB and EFA; with this proposed rule change, the Exchange is simply extending its current fees to an additional seven symbols. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[20] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 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–ISE–2012–07 and should be submitted on or before March 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66401; File No. SR–NYSE–2012–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 123C(4) To Provide for How Certain Interest Is Included in the Calculation of MOC and LOC Imbalances

February 15, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 2, 2012, New York Stock Exchange LLC ("NYSE" 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 123C(4) to provide for how certain interest is included in the calculation of MOC and LOC

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

imbalances. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *www.nyse.com*, and *www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 123C(4) to provide more specificity of how certain interest is treated for purpose of calculating MOC and LOC[4] imbalances. In particular, the Exchange proposes to amend Rule 123C(4)(a)(vi) to describe how LOC orders priced equal to the last sale are treated in the imbalance publication and to add new supplementary material to describe how sell short interest is treated in the imbalance publication during a Short Sale Period, as defined in Exchange Rule 440B.

Background

Exchange Rule 123C(4) describes how the Exchange calculates the MOC and LOC imbalances. The Exchange publishes MOC and LOC imbalance information as part of its Informational Imbalance Publication (as defined in Rule 123C(1)(b)), Mandatory MOC/LOC Imbalance Publication (as defined in Rule 123C(1)(d)), and Order Imbalance Information (as defined in Rule 123C(1)(e)), which are further described in Rule 123C(5) and (6). The MOC and LOC imbalance information is intended to provide market participants with a snapshot of the prices at which interest eligible to participate in the closing transaction would be executed in full against each other at the time the data feed is disseminated. The manner by which the imbalance is calculated takes into consideration the order of execution at the close, as set forth in Rule 123C(7). The goal of such transparency is to attract contra-side interest to offset order imbalances, thereby potentially minimizing price dislocation at the close.

Proposed Amendments

Because the MOC and LOC imbalance calculations under Rule 123C(4) are intended to provide an informational snapshot of what an imbalance may be at a particular time, and are intended to mirror how the imbalance is calculated for purposes of determining the closing price, the Exchange proposes to amend elements of Rule 123C(4) to describe with more specificity how the imbalance is calculated. The Exchange notes that these proposed rule change does not change how the Exchange currently calculates the imbalance information, but rather provides more detail in the rule text concerning the methodology for calculation.

First, the Exchange proposes to amend Exchange Rule 123C(4)(a)(vi) to describe with more specificity how LOC interest that is priced equal to the last sale is addressed in the MOC and LOC imbalance calculation. Because the Buy or Sell Imbalance is intended to be indicative of what the imbalance would be at the close, the Exchange seeks to reduce the Buy or Sell Imbalance by any closing interest that could potentially participate in the close, which is why the rule currently provides that tick sensitive MOC and LOC interest can reduce the Buy or Sell Imbalance to bring the imbalance quantity as close to zero as possible.

The Exchange proposes to amend Rule 123C(4)(a)(vi) to add that LOC orders priced equal to the last sale also reduce the Buy or Sell Imbalance. The Exchange proposes this change because, as set forth in Rule 123C(7)(b)(ii), LOC orders priced equal to the closing price may participate in the closing transaction. Because such interest may participate in the close, the Exchange believes that when calculating the imbalance, reducing the Buy or Sell Imbalance by the amount of LOC interest priced equal to the last sale provides a potentially more realistic indication of how the imbalance may be offset at the close.

Second, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B), which currently provide more detail of which tick sensitive interest is included to offset a Buy or Sell Imbalance, as provided for under Rule 123C(4)(a)(vi). Rule 123C(4)(a)(vi)(A) currently provides that of tick sensitive orders, only Sell Plus[5] MOC and Sell Plus LOC orders priced below the last sale will be included to offset the Buy Imbalance. Rule 123C4(a)(vi)(B) currently provides that of tick sensitive orders, only Buy Minus[6] MOC and Buy Minus LOC orders priced above the last sale price will be included to offset the Sell Imbalance. Because the Exchange is proposing to amend Rule 123C(4)(a)(vi) to add that LOC interest priced equal to the last sale price can offset the Buy or Sell Imbalance, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B). Accordingly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) to specify that Sell Plus LOC orders priced equal to or below the last sale price and Sell and Sell Short LOC orders priced equal to the last sale price will also be included to offset the Buy Imbalance. Similarly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(B) to specify that Buy Minus LOC orders priced equal to or above the last sale price, and Buy LOC orders priced equal to the last sale will be included to offset the Sell Imbalance.

Third, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) and (B) to further specify that tick sensitive interest will be included to offset the Buy or Sell Imbalance only if such orders could be executed consistent with the terms of their tick restrictions. This proposed amendment is consistent with the rationale of how MOC and LOC imbalances are calculated, namely, to include interest that could participate in the closing price to offset the imbalance.

[4] *See* Rule 13 for definitions of MOC and LOC orders.

[5] As defined in Rule 13, a Sell Plus order is a market or limit order to sell a stated amount of stock for which the price to be obtained is not lower than the last sale if the last sale was a "plus" or "zero plus" tick, and is not lower than the last sale plus the minimal fractional change in the stock if the last sale was a "minus" or "zero minus" tick. The purpose of a Sell Plus order is to ensure that a market participant does create a new low price with the sell order. For example, if the closing price is $10.10, and the last sale prior to the closing transaction was $10.11 or higher on a plus or zero plus tick, a Sell Plus LOC with a limit of $10.09 would not participate in the closing transaction because it would be selling at a price lower than the last sale, which was on a plus or zero plus tick.

[6] As defined in Rule 13, a Buy Minus order is a market or limit order to buy a stated amount of stock on the close for which the price to be obtained is not higher than the last sale if the last sale was a "minus" or "zero minus" tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a "plus" or "zero plus" tick. The purpose of a Buy Minus order is to ensure that a market participant does not create a new high price with the buy order. For example, if the closing price is $10.10, and the last sale prior to the closing transaction was $10.09 or below on a minus or zero minus tick, a Buy Minus LOC with a limit price of $10.11 would not participate in the closing transaction because it would be buying at a price higher than the last sale, which was on a minus or zero minus tick.

If, by the terms of the tick restriction, an order could not participate in the close, such interest should not be used to offset the imbalance calculation. For example, if the Buy Imbalance is calculated based on a $10.10 reference price, and the last sale prior to that reference price is $10.11 on a plus or zero plus tick, Sell Plus MOCs and Sell Plus LOCs are not included to offset that Buy Imbalance because they would not participate if that were the closing price at that time. Likewise, if the last sale is $10.09 on a minus or zero minus tick, and the Sell Imbalance is calculated based on a $10.10 reference price, Buy Minus MOCs and Buy Minus LOCS priced below the last sale are not included to offset the Sell Imbalance because they would not participate if that were the closing price at that time.

Finally, the Exchange proposes to add supplementary material .30 to Rule 123C to specify how Sell Short interest is treated for purposes of calculating MOC and LOC imbalances during a Short Sale Period, as defined in Rule 440B(d). Rule 123C(4)(a)(iv) currently provides that Sell Short MOC and Sell Short LOC orders priced below the last sale price are included in the aggregation of the Sell side closing volume. During a Short Sale Period, if a security closes at a price equal to or lower than the last Exchange bid, sell short interest would not be eligible to participate in the closing transaction. Because a Sell imbalance publication is an indication that the security is more likely to close at a price that is equal to or lower than the bid, during a Short Sale Period, Sell Short MOC and LOC interest likely would not participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to exclude Sell Short MOC and LOC orders from the Sell side volume because such interest would likely not be eligible to participate in the closing transaction.

In addition, during a Short Sale Period, in addition to the interest specified in Rule 123C(a)(4)(vi)(A) that offsets the Buy Imbalance (as amended by this rule proposal), all Sell Short MOC and LOC interest priced equal to or below the last sale price will be included to offset the Buy Imbalance. During a Short Sale Period, if a security closes higher than the last Exchange bid, Sell Short MOC and LOC interest would be eligible to participate in the closing transaction. Because a Buy side imbalance publication is an indication that there may be upward price pressure on the closing sale price, and the security is more likely to close at a price that is above the bid, in such a situation, Sell Short MOC and LOC interest likely would participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to offset the Buy Imbalance with Sell Short MOC and LOC interest because such interest would likely participate in the closing transaction.

The Exchange notes that the manner by which the Exchange currently calculates the MOC and LOC imbalances is consistent with how such interest would participate if the closing transaction were to be based on the point in time at which each MOC and LOC imbalance publication is calculated. The Exchange proposes these rule amendments to provide that level of specificity in how the rule text describes the manner by which the MOC and LOC imbalances are being calculated. The Exchange further notes that this rule change concerns only the manner by which the MOC and LOC imbalance is calculated for purposes of imbalance publications and does not change in any way the manner by which trading occurs at the Exchange or how interest is executed in the closing transaction.

2. Statutory Basis

The basis under the Act for these proposed rule changes are the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objective of perfecting the mechanism of a free and open market as it provides transparency in the manner by which the Exchange calculates the MOC and LOC imbalance information that the Exchange publishes pursuant to Rule 123C(5) and (6) both during regular trading and during a Short Sale Period pursuant to Rule 440B. Specifically, these rule changes provide transparency of how LOC interest priced equal to the last sale price will be used to offset a Buy or Sell Imbalance and how Sell Short interest will be treated for the imbalance calculation during a Short Sale Period.

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.

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2012–03 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–NYSE–2012–03. This file number should be included on the subject line if email is used. To help the

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

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 No. SR–NYSE–2012–03 and should be submitted on or before March 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4080 Filed 2–21–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66400; File No. SR–NYSEAmex–2012–07]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 123C(4) To Provide for How Certain Interest Is Included in the Calculation of MOC and LOC Imbalances

February 15, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 3, 2012, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 123C(4) to provide for how certain interest is included in the calculation of MOC and LOC imbalances. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com*, and *www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 123C(4) to provide more specificity of how certain interest is treated for purpose of calculating MOC and LOC[4] imbalances. In particular, the Exchange proposes to amend Rule 123C(4)(a)(vi) to describe how LOC orders priced equal to the last sale are treated in the imbalance publication and to add new supplementary material to describe how sell short interest is treated in the imbalance publication during a Short Sale Period, as defined in NYSE Amex Equities Rule 440B.

Background

NYSE Amex Equities Rule 123C(4) describes how the Exchange calculates the MOC and LOC imbalances. The Exchange publishes MOC and LOC imbalance information as part of its Informational Imbalance Publication (as defined in Rule 123C(1)(b)), Mandatory MOC/LOC Imbalance Publication (as defined in Rule 123C(1)(d)), and Order Imbalance Information (as defined in Rule 123C(1)(e)), which are further described in Rule 123C(5) and (6). The MOC and LOC imbalance information is intended to provide market participants with a snapshot of the prices at which interest eligible to participate in the closing transaction would be executed in full against each other at the time the data feed is disseminated. The manner by which the imbalance is calculated takes into consideration the order of execution at the close, as set forth in Rule 123C(7). The goal of such transparency is to attract contra-side interest to offset order imbalances, thereby potentially minimizing price dislocation at the close.

Proposed Amendments

Because the MOC and LOC imbalance calculations under Rule 123C(4) are intended to provide an informational snapshot of what an imbalance may be at a particular time, and are intended to mirror how the imbalance is calculated for purposes of determining the closing price, the Exchange proposes to amend elements of Rule 123C(4) to describe with more specificity how the imbalance is calculated. The Exchange notes that these proposed rule change does not change how the Exchange currently calculates the imbalance information, but rather provides more detail in the rule text concerning the methodology for calculation.

First, the Exchange proposes to amend Rule 123C(4)(a)(vi) to describe with more specificity how LOC interest that is priced equal to the last sale is addressed in the MOC and LOC imbalance calculation. Because the Buy or Sell Imbalance is intended to be indicative of what the imbalance would be at the close, the Exchange seeks to reduce the Buy or Sell Imbalance by any closing interest that could potentially participate in the close, which is why the rule currently provides that tick sensitive MOC and LOC interest can reduce the Buy or Sell Imbalance to bring the imbalance quantity as close to zero as possible.

The Exchange proposes to amend Rule 123C(4)(a)(vi) to add that LOC orders priced equal to the last sale also reduce the Buy or Sell Imbalance. The Exchange proposes this change because, as set forth in Rule 123C(7)(b)(ii), LOC orders priced equal to the closing price may participate in the closing transaction. Because such interest may

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* NYSE Amex Equities Rule 13 for definitions of MOC and LOC orders.

participate in the close, the Exchange believes that when calculating the imbalance, reducing the Buy or Sell Imbalance by the amount of LOC interest priced equal to the last sale provides a potentially more realistic indication of how the imbalance may be offset at the close.

Second, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B), which currently provide more detail of which tick sensitive interest is included to offset a Buy or Sell Imbalance, as provided for under Rule 123C(4)(a)(vi). Rule 123C(4)(a)(vi)(A) currently provides that of tick sensitive orders, only Sell Plus [5] MOC and Sell Plus LOC orders priced below the last sale will be included to offset the Buy Imbalance. Rule 123C4(a)(vi)(B) currently provides that of tick sensitive orders, only Buy Minus [6] MOC and Buy Minus LOC orders priced above the last sale price will be included to offset the Sell Imbalance. Because the Exchange is proposing to amend Rule 123C(4)(a)(vi) to add that LOC interest priced equal to the last sale price can offset the Buy or Sell Imbalance, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B). Accordingly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) to specify that Sell Plus LOC orders priced equal to or below the last sale price and Sell and Sell Short LOC orders priced equal to the last sale price will also be included to offset the Buy Imbalance. Similarly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(B) to specify that Buy Minus LOC orders priced equal to or above the last sale price, and Buy LOC orders priced equal to the last sale will be included to offset the Sell Imbalance.

Third, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) and (B) to further specify that tick sensitive interest will be included to offset the Buy or Sell Imbalance only if such orders could be executed consistent with the terms of their tick restrictions. This proposed amendment is consistent with the rationale of how MOC and LOC imbalances are calculated, namely, to include interest that could participate in the closing price to offset the imbalance. If, by the terms of the tick restriction, an order could not participate in the close, such interest should not be used to offset the imbalance calculation. For example, if the Buy Imbalance is calculated based on a $10.10 reference price, and the last sale prior to that reference price is $10.11 on a plus or zero plus tick, Sell Plus MOCs and Sell Plus LOCs are not included to offset that Buy Imbalance because they would not participate if that were the closing price at that time. Likewise, if the last sale is $10.09 on a minus or zero minus tick, and the Sell Imbalance is calculated based on a $10.10 reference price, Buy Minus MOCs and Buy Minus LOCS priced below the last sale are not included to offset the Sell Imbalance because they would not participate if that were the closing price at that time.

Finally, the Exchange proposes to add supplementary material .30 to Rule 123C to specify how Sell Short interest is treated for purposes of calculating MOC and LOC imbalances during a Short Sale Period, as defined in Rule 440B(d). Rule 123C(4)(a)(iv) currently provides that Sell Short MOC and Sell Short LOC orders priced below the last sale price are included in the aggregation of the Sell side closing volume. During a Short Sale Period, if a security closes at a price equal to or lower than the last Exchange bid, sell short interest would not be eligible to participate in the closing transaction. Because a Sell imbalance publication is an indication that the security is more likely to close at a price that is equal to or lower than the bid, during a Short Sale Period, Sell Short MOC and LOC interest likely would not participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to exclude Sell Short MOC and LOC orders from the Sell side volume because such interest would likely not be eligible to participate in the closing transaction.

In addition, during a Short Sale Period, in addition to the interest specified in Rule 123C(a)(4)(vi)(A) that offsets the Buy Imbalance (as amended by this rule proposal), all Sell Short MOC and LOC interest priced equal to or below the last sale price will be included to offset the Buy Imbalance. During a Short Sale Period, if a security closes higher than the last Exchange bid, Sell Short MOC and LOC interest would be eligible to participate in the closing transaction. Because a Buy side imbalance publication is an indication that there may be upward price pressure on the closing sale price, and the security is more likely to close at a price that is above the bid, in such a situation, Sell Short MOC and LOC interest likely would participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to offset the Buy Imbalance with Sell Short MOC and LOC interest because such interest would likely participate in the closing transaction.

The Exchange notes that the manner by which the Exchange currently calculates the MOC and LOC imbalances is consistent with how such interest would participate if the closing transaction were to be based on the point in time at which each MOC and LOC imbalance publication is calculated. The Exchange proposes these rule amendments to provide that level of specificity in how the rule text describes the manner by which the MOC and LOC imbalances are being calculated. The Exchange further notes that this rule change concerns only the manner by which the MOC and LOC imbalance is calculated for purposes of imbalance publications and does not change in any way the manner by which trading occurs at the Exchange or how interest is executed in the closing transaction.

2. Statutory Basis

The basis under the Act for these proposed rule changes are the requirement under Section 6(b)(5) [7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, this rule proposal supports the objective of perfecting the mechanism of a free and open market as it provides transparency in the manner by which the Exchange calculates the MOC and LOC imbalance information that the Exchange publishes

[5] As defined in NYSE Amex Equities Rule 13, a Sell Plus order is a market or limit order to sell a stated amount of stock for which the price to be obtained is not lower than the last sale if the last sale was a "plus" or "zero plus" tick, and is not lower than the last sale plus the minimal fractional change in the stock if the last sale was a "minus" or "zero minus" tick. The purpose of a Sell Plus order is to ensure that a market participant does create a new low price with the sell order. For example, if the closing price is $10.10, and the last sale prior to the closing transaction was $10.11 or higher on a plus or zero plus tick, a Sell Plus LOC with a limit of $10.09 would not participate in the closing transaction because it would be selling at a price lower than the last sale, which was on a plus or zero plus tick.

[6] As defined in NYSE Amex Equities Rule 13, a Buy Minus order is a market or limit order to buy a stated amount of stock on the close for which the price to be obtained is not higher than the last sale if the last sale was a "minus" or "zero minus" tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a "plus" or "zero plus" tick. The purpose of a Buy Minus order is to ensure that a market participant does not create a new high price with the buy order. For example, if the closing price is $10.10, and the last sale prior to the closing transaction was $10.09 or below on a minus or zero minus tick, a Buy Minus LOC with a limit price of $10.11 would not participate in the closing transaction because it would be buying at a price higher than the last sale, which was on a minus or zero minus tick.

[7] 15 U.S.C. 78f(b)(5).

pursuant to NYSE Amex Equities Rule 123C(5) and (6) both during regular trading and during a Short Sale Period pursuant to NYSE Amex Equities Rule 440B. Specifically, these rule changes provide transparency of how LOC interest priced equal to the last sale price will be used to offset a Buy or Sell Imbalance and how Sell Short interest will be treated for the imbalance calculation during a Short Sale Period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEAmex–2012–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEAmex–2012–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 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 No. SR–NYSEAmex–2012–07 and should be submitted on or before March 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4079 Filed 2–21–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66397; File Nos. SR–NYSE–2011–56; SR–NYSEAmex–2011–86]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Order Instituting Proceedings To Determine Whether To Disapprove Proposed Rule Changes To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers and To Permit Designated Market Makers and Floor Brokers Access to Disaggregated Order Information

February 15, 2012.

I. Introduction

On October 31, 2011, the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex") (collectively, the "SROs") each 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] proposed rule changes (the "SRO Proposals") to amend certain of their respective rules relating to Designated Market Makers ("DMMs") [3] and Floor brokers. The SRO Proposals were published for comment in the **Federal Register** on November 17, 2011.[4] The Commission received no comment letters on the proposals.

On December 22, 2011, the Commission extended the time period in which to either approve the SRO Proposals, disapprove the SRO Proposals, or to institute proceedings to determine whether to disapprove the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Rule 98(b)(2). "DMM unit" means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to section (c) of NYSE Rule 98, (ii) is eligible for allocations under NYSE Rule 103B as a DMM unit in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit. The term "DMM" means any individual qualified to act as a DMM on the Floor of the Exchange under NYSE Rule 103. *See also* NYSE Amex Equities Rule 2(i). Rule 2(i) defines the term "DMM" to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE Amex Equities Rule 2(j) defines the term "DMM unit" as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Amex Equities Rule 98.

[4] Securities Exchange Act Release Nos. 65735 (November 10, 2011), 76 FR 71405 (SR–NYSEAmex–2011–86) and 65736 (November 10, 2011), 76 FR 71399 (SR–NYSE–2011–56).

SRO Proposals, to February 15, 2012.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the SRO Proposals.

II. Description of the Proposals

The SRO Proposals seek to amend the SROs' rules in several ways. First, the SROs propose to codify certain Trading Floor functions that may be performed by DMMs. Second, the SROs propose to allow DMMs to access Exchange systems that would provide DMMs with additional order information about the securities in which they are registered. Third, the SROs propose to make certain conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems, and to specify what information about e-Quotes is available to the DMM. Finally, the SROs propose to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and others.

A. Trading Floor Functions

The SROs propose to codify certain Trading Floor functions formerly performed by specialists that are to be performed by DMMs, and were described in each SRO's respective Floor Official Manual.[6]

The proposed rules would specify four categories of Trading Floor functions that DMMs could perform: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel;[7] (2) bringing Floor brokers together to facilitate trading;[8] (3) assisting Floor brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker;[9] and (4) researching the status of orders or questioned trades.[10]

B. DMM Access to Additional Order Information

Each SRO proposes to make systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (A) Aggregated information about buying and selling interest;[11] (B) disaggregated information about the price and size of any individual order or Floor broker agency interest file (also known as "e-Quotes)," and the entering and clearing firm information for such orders, except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (C) post-trade information.[12] The proposals would make available to DMMs disaggregated information about the following interest in securities in which the DMM is registered: (a) The price and size of all displayable interest submitted by off-Floor participants; and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.[13]

C. Conforming Amendments and Floor Broker e-Quote Information

The SROs also propose to make conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems, and to specify what information about e-Quotes is available to the DMM. Specifically, the SROs propose to revise NYSE Rule 70 and NYSE Amex Rule 70 governing Floor broker e-Quotes to reflect that disaggregated order information would be available to the DMM except as elected otherwise. The SROs would allow a Floor broker to enter e-Quotes with reserve interest ("Reserve e-Quote") with or without a displayable portion.

A Reserve e-Quote with a displayable portion would participate in manual and automatic executions. Order information at each price point, including the reserve portion, would be included in the aggregate interest available to the DMM. Order information at each price point would be available to the DMM on a disaggregated basis as well. If the Floor broker chooses to exclude the Reserve e-Quote with a displayable portion from the DMM, then the DMM would have access to the entire portion on an aggregated basis but would not have access to any of that interest on a disaggregated basis.

A Floor broker Reserve e-Quote with an undisplayable portion would also participate in manual and automatic executions. Like the Reserve e-Quote with a displayable portion, order information at each price point would be included in the aggregate interest available to DMM. Again, like the Reserve e-Quote with a displayable portion, order information at each price point would be available to DMM on a disaggregated basis as well. If the Floor broker chooses to exclude the Reserve e-Quote with an undisplayable portion from the DMM, however, then the DMM would not have access to such interest on either an aggregated basis or a disaggregated basis. Such interest would not participate in manual executions.

In addition, the SROs propose to delete rules which currently prohibit DMMs from using the Display Book system to access information about Floor broker agency interest excluded from the aggregated agency interest and Minimum Display Reserve Order information, other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display

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[5] See Securities Exchange Act Release No. 66036, 76 FR 82011 (December 29, 2011).

[6] See *2004 Floor Officiol Monual, Market Surveillonce June 2004 Edition*, Chapter Two, Section I.

[7] See *id.* at Section I.A. at 7 ("specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities").

[8] See *id.* at Section I.B.3. at 10–11 ("[i]n opening and reopening trading in a listed security, a specialist should * * * [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate" and "[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary").

[9] See *id.* at Section I.B.4. at 11 ("In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows * * * [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.").

[10] See *id.* at Section I.B.5. at 12 (A specialist should "[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors.").

[11] Exchange systems currently make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-Floor participants; (b) all Minimum Display Reserve orders, including the reserve portion; (c) all displayable Floor broker agency interest files ("e-Quotes"); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the Floor broker elects to exclude that reserve quantity from availability to the DMM.

[12] For the latter two categories, the DMM also would have access to entering and clearing firm information for each order and, as applicable, the badge number of the Floor broker representing the order. According to the SROs, the systems would not contain any information about the ultimate customer (*i.e.*, the name of the member or member organization's customer) in a transaction.

[13] The SROs previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The SROs stopped making such information available to DMMs on January 19, 2011. See NYSE and NYSE Amex Information Memo 11–03.

Reserve Order interest information is necessary to effect such transaction.[14]

D. Ability of DMMs To Provide Market Information on the Trading Floor

The SROs also propose to modify the manner under which DMMs would be permitted to provide market information to Floor brokers and visitors on the Trading Floor. Specifically, the proposed rules would permit a DMM to provide the market information to which he or she has access to a: (1) Floor broker in response to an inquiry in the normal course of business; or (2) visitor to the Trading Floor for the purpose of demonstrating methods of trading. As such, Floor brokers would be able to access disaggregated order information that market participants have not otherwise elected to be hidden from the DMM. A Floor broker would not be able to submit such an inquiry for market information by electronic means, and the DMM's response containing market information could not be through electronic means.

Because the proposed rule expands on and incorporates the current SRO rules regarding disclosure of order information by DMMs; the SROs are proposing to delete these rules.[15] The current rules provide that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the Trading Floor. This aspect of the current rule is replicated in the proposed rules. Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System ("ITS"). According to the SROs, this text is obsolete as the ITS Plan has been eliminated and therefore the SROs are proposing to delete it. Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including (a) aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule ("CCS") interest as described in Rule 1000(c), in response to an inquiry from a member conducting a market probe in the normal course of business.

The proposed rules would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs currently are permitted to provide under current rules, but also with the disaggregated and post-trade order information described above.[16] In the SROs' view, broadening the scope of information that DMMs can provide Floor brokers would assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate trading.[17] The SROs believe, among other things, that providing Floor brokers access to disaggregated order information would increase their ability to source liquidity and provide price discovery for block transactions.

The proposed rules would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided "in response to an inquiry from a member conducting a market probe in the normal course of business," as currently provided in the SRO rules. According to the SROs, the term "market probe" no longer accurately reflects the manner in which DMMs and Floor brokers interact on the Trading Floor. Rather, the SROs stated that the Floor broker's normal course of business, as an agent for customers, includes both seeking market probes into the depth of the market as well as seeking out willing contra-side buyers and sellers in a particular security. Under the proposed rule change, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and they would only be able to access such market information through a direct interaction with a DMM at the post.

III. Proceedings To Determine Whether To Disapprove SR–NYSE–2011–56 and SR–NYSEAmex–2011–86 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the SRO Proposals should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the SRO Proposals that are discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the SRO Proposals.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act[18] requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, Section 6(b)(5) prohibits the rules of an exchange from being designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As the Commission has previously recognized, the participation of market makers in exchange markets may benefit public customers by promoting more liquid and efficient trading, and an exchange may legitimately confer benefits on market participants willing to accept substantial responsibilities to contribute to market quality.[19] While the rules of an exchange may confer special or unique benefits upon certain types of participants, however, such rules still must ensure, among other things, that investors and the public interest are protected.[20] Accordingly, the Commission carefully reviews trading rule proposals that seek to offer special advantages to market makers and others. Although an exchange may reward such participants for the benefits they provide to the exchange's market, such rewards must not be disproportionate to the services provided.[21]

In their proposals, the SROs take the position that providing DMMs with disaggregated order information would

[14] *See* proposed deletions to NYSE Rule 104(a)(6) and NYSE Amex Rule 104(a)(b).

[15] The SROs are also proposing conforming amendments to correct cross-references to the former rule.

[16] Because DMMs on the Trading Floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

[17] According to the SROs, prior to adoption of the Hybrid Market, Exchange specialists historically had been permitted to provide disaggregated order information to Floor brokers.

[18] 15 U.S.C. 78f(b)(5).

[19] *See, e.g.*, Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) ("New Market Model Order"), at 64388. *See also* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) at 40148.

[20] *See* New Market Model Order at 64388. *See also* 15 U.S.C. 78f(b)(5).

[21] *See* New Market Model Order at 64388. At the time NYSE adopted its New Market Model, the Commission believed that the rules reflected "an appropriate balance of DMM obligations against the benefits provided to DMMs under [the] proposal." *Id.*

assist them in carrying out their trading floor functions, such as maintaining order among Floor brokers manually trading at the DMM's assigned panel, bringing Floor brokers together to facilitate trading, assisting Floor brokers with respect to their orders, and researching the status of orders or questioned trades. The SROs also believe that providing this information to Floor brokers would serve a valuable function by increasing the ability of Floor brokers to source liquidity and provide price discovery for block transactions.

While the SRO proposals may improve the ability of DMMs and Floor brokers to trade on the SROs, they also would provide DMMs and Floor brokers access to potentially valuable information about individual orders on the SROs that is not available to other exchange members or market participants. This information would include the price and size of individual orders on the SROs, as well as the entering and clearing firm for such orders. It also would include information about trading interest that is not available to other exchange members or market participants even in aggregated form, such as Floor broker Reserve e-Quotes (unless there has been an affirmative election to withhold this information). As noted above, while the Commission has recognized that exchanges may legitimately confer special benefits on market participants willing to accept substantial responsibilities to contribute to market quality, such benefits must not be disproportionate to the services provided. In this case, the SROs have not proposed to require of DMMs or Floor brokers any additional obligations to the market that might correspond to the proposed informational benefits.[22] Nor have the SROs clearly explained how the proposals might materially improve the quality of the SROs' markets, particularly given the increasing amount of automated transactions on the SROs and the reduced role of the Exchange floors. As a result, the Commission is concerned that the SROs' proposals, among other things, may unfairly discriminate in favor of DMMs and Floor brokers, may not be designed to protect the broad group of investors that trade on the SROs, and otherwise may be inequitable.

The Commission therefore believes that questions remain as to whether the SRO Proposals are consistent with the requirements of Sections 6(b)(5) of the Act, including whether they would promote just and equitable principles of trade, perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not permit unfair discrimination.

[22] The Commission further notes that, while DMMs have certain special obligations to the SROs, including those relating to the maintenance of a fair and orderly market, Floor brokers do not have similar obligations.

IV. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the SRO Proposals. In particular, the Commission invites the written views of interested persons concerning whether the SRO Proposals are inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[23]

Interested persons are invited to submit written data, views and arguments regarding whether the SRO Proposals should be disapproved by March 14, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 28, 2012. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Numbers SR–NYSE–2011–56 and SR–NYSEAmex–2011–86 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.

[23] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to File Numbers SR–NYSE–2011–56 and SR–NYSEAmex–2011–86. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the SRO Proposals that are filed with the Commission, and all written communications relating to the SRO Proposals between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchanges. 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 Numbers SR–NYSE–2011–56 and SR–NYSEAmex–2011–86 and should be submitted on or before March 14, 2012. Rebuttal comments should be submitted by March 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4003 Filed 2–21–12; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66398; File No. SR–NSCC–2012–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance Its Margining Methodology as Applied to Municipal and Corporate Bonds

February 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act") [1] and Rule 19b–4 thereunder [2] notice is hereby given that on February 1, 2012, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. 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 purpose of the proposed rule change is to enhance NSCC's margining methodology as it applies to municipal and corporate bonds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Proposal Overview

A primary objective of NSCC's Clearing Fund is to have on deposit from each applicable member assets sufficient to satisfy losses that may otherwise be incurred by NSCC as the result of the default of the member and the resultant close out of that member's unsettled positions under NSCC's trade guaranty. Each member's clearing fund ("Clearing Fund") required deposit is calculated daily pursuant to a formula set forth in Procedure XV of the Rules, which formula is designed to provide sufficient funds to cover this risk of loss. The Clearing Fund formula accounts for a variety of risk factors through the application of a number of components, each described in Procedure XV.[4]

The volatility component or "VaR" is a core component of this formula and is designed to calculate the amount of money that may be lost on a portfolio over a given period of time and that is assumed would be necessary to liquidate the portfolio within a given level of confidence. Pursuant to Procedure XV, NSCC may exclude from this calculation net unsettled positions in classes of securities whose volatility is not amendable to generally accepted statistical analysis in a complex manner, such as illiquid municipal or corporate bonds. The volatility charge for such positions is determined by multiplying the absolute value of the positions by a predetermined percentage ("haircut"), which shall not be less than 2%.

In connection with its ongoing review of the adequacy and appropriateness of its margining methodologies, NSCC is proposing to amend Procedure XV of the Rules so that NSCC will apply this haircut-based margining methodology, at a rate no less than 2%, as is currently permitted by Procedure XV to all municipal and corporate bonds processed through NSCC. The proposed rule change will make clear that to the extent NSCC deems appropriate NSCC may apply this haircut to any of the municipal and corporate bonds that it processes. As NSCC continuously reviews its margin models in order to ensure the reliability of its margining methodology in achieving the desired coverage, the proposed rule change will allow it to apply a margin requirement to these instruments that it deems appropriate.

NSCC reviews its risk management processes against applicable regulatory and industry standards, including, but not limited to: (i) The Recommendations for Central Counterparties ("Recommendations") of the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions ("IOSCO") and (ii) the securities laws and rulemaking promulgated by the Commission. In conformance to Recommendations 3 and 4 of the IOSCO Recommendations and with the Commission rules proposed under the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, specifically proposed Rule 17Ad–22(b)(1) addressing measurement and management of credit exposures, this proposed rule change will assist NSCC in its continuous efforts to ensure the reliability of its margining methodology and will limit NSCC's exposures and losses by allowing it to apply a margin requirement to corporate and municipal bonds cleared at NSCC that captures the risk characteristics of these instruments, including historical price volatility and market liquidity and idiosyncratic risk, which are asset class specific.

Implementation Timeframe

Pending Commission approval of this proposed rule change, members will be advised of the implementation date through issuance of an NSCC Important Notice.

Proposed Rule Changes

In order make clear that, to the extent NSCC deems appropriate, a haircut-based margining methodology may be applied to all municipal and corporate bonds processed at NSCC, NSCC proposes to amend Sections I(A)(1)(a)(ii) and I(A)(2)(a)(ii) of Procedure XV, as marked on Exhibit 5 attached to the proposed rule filing by removing the qualifier "illiquid" before "municipal or corporate bonds." No other changes to the Rules are contemplated by this proposed rule change.

As a central counterparty, NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, thereby reducing the risk faced by participants and contributing to global financial stability. The effectiveness of a central counterparty's risk controls and the adequacy of its financial resources are critical to achieving these risk-reducing goals. The proposed rule change will assist NSCC in its continuous efforts to ensure the reliability of its margining methodology and will limit NSCC's exposures and losses by allowing it to apply a margin requirement to corporate and municipal bonds cleared at NSCC that captures the risk characteristics of these instruments. NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder applicable to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] In addition to those described in this filing, Clearing Fund components also include (i) a mark-to-market component which, with certain exclusions, takes into account any difference between the contract price and market price for net positions of each security in a member's portfolio through settlement; (ii) the Market Maker Domination component, or "MMDOM", is charged to Market Makers, or firms that clear for them; (iii) a "special charge" in view of price fluctuations in or volatility or lack of liquidity of any security; (iv) an additional charge (between 5–10%) of a member's outstanding fail positions; (v) a "specified activity charge" for transactions scheduled to settle on a shortened settlement cycle (i.e., less than T+3 or T+3 for "as-of" transactions); (vi) an additional charge which NSCC may require of members on surveillance status; and (vii) an "Excess Capital Premium" which takes into account the degree to which a member's collateral requirement compares to the member's excess net capital by applying a charge if a member's Required Deposit, minus amounts applied from the charges described in (ii) and (iii) above, is above its required capital.

[5] 15 U.S.C. 78q–1.

NSCC, specifically with proposed Rule 17Ad–22(b)(1) that addresses measurement and management of credit exposures, as well as with the IOSCO Recommendations 3 and 4. The proposed rule change is not inconsistent with the existing rules of NSCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will allow NSCC to apply a margin requirement to corporate and municipal bonds cleared at NSCC that captures the risk characteristics of these instruments. Therefore, the proposed rule change will help NSCC to limit its exposures and losses to these instruments and as such will contribute to the goal of financial stability in the event of member default and will render not unreasonable or inappropriate any burden on competition that the changes could be regarded as imposing.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve or disapprove the proposed rule change or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2012–02 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–NSCC–2012–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/nscc/2012-02.pdf*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2012–02 and should be submitted on or before March 14, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–4004 Filed 2–21–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66399; File No. SR–NSCC–2012–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make a Technical Correction With Respect to the Excess Capital Premium as Set Forth in Procedure XV (Clearing Fund Formula) of NSCC's Rules and Procedures

February 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 1, 2012, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A) (i) of the Act[2] and Rule 19b–4(f)(1)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this filing is to make a technical correction with respect to the Excess Capital Premium as set forth in Procedure XV (Clearing Fund Formula) of NSCC's Rules and Procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified the text of the summaries prepared by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to make a technical correction with respect to the Excess Capital Premium as set forth in Procedure XV (Clearing Fund Formula) of NSCC's Rules and Procedures.

Members are required to make deposits to the Clearing Fund with the amount of each Member's required deposit being fixed by NSCC in accordance with Procedure XV. The Clearing Fund Formula includes an Excess Capital Premium ("Premium"), which may be added to a Members deposit requirement when a Member's Clearing Fund requirement exceeds its regulatory excess capital. Certain components of the Clearing Fund Formula are excluded from the calculation of the Premium, including: (a) A charge applicable to "Market Makers" and (b) a "special charge" based on the price fluctuations, volatility, or lack of liquidity of any security.[5] These components are excluded with respect to the computation of the Premium for both CNS transactions and Balance Order transactions. At the time of the rule change to implement the Premium, the applicable components for (a) and (b) above as they relate to CNS transactions were listed under Subsections I.(A)(1)(c) and I.(A)(1)(d) of Procedure XV.[6] A subsequent rule change submitted to the Commission (relating to NSCC's ID Net service) created an additional Clearing Fund component applicable to CNS transactions that was designated as Subsection I.(A)(1)(c).[7] This caused the references for the components described in (a) and (b) above to be changed to I.(A)(1)(d) and I.(A)(1)(e) respectively. However, the cross-references to those Subsections were inadvertently not revised in the description of the Premium. Therefore, NSCC is making a technical modification to the description of the Premium as set forth in Procedure XV to reflect the changes which were inadvertently omitted from the latter rule change as described above.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to NSCC because it makes a technical correction to a rule which allows NSCC to effectively manage risk. As such, it assures the safeguarding of securities and funds, which are in the custody or control of NSCC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1)[10] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NSCC. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2012–01 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–NSCC–2012–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://dtcc.com/downloads/legal/rule_filings/2012/nscc/2012–01.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2012–01 and should be submitted on or before March 14, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–4005 Filed 2–21–12; 8:45 am]

BILLING CODE 8011–01–P

[5] The Premium also excludes any amount collected pursuant to Rule 15 (Assurances of Financial Responsibility and Operational Capability).

[6] Securities Exchange Act Release No. 34–54457 (September 15, 2006), 71 FR 55239 (September 21, 2006).

[7] Securities Exchange Act Release No. 34–57901 (June 2, 2008), 73 FR 32373 (June 6, 2008). This change did not apply to Balance Order transactions.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66403; File No. SR–EDGA–2012–05]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Offering of a New Historical Data Feed Service to Members and Non-Members

February 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 10, 2012, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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 U.S. Securities and Exchange Commission (the "Commission") a proposed rule change to offer a new historical data feed service (the "Service") to Members[3] and non-Members of the Exchange. In connection with the same, the Exchange is proposing to amend its fee schedule applicable to Members and non-Members of the Exchange pursuant to Exchange Rules 15.1(a) and (c). The Exchange intends to implement the proposed rule change on February 13, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to begin offering a new Service, namely EdgeBook Cloud, that will allow Members and non-Members of the Exchange (collectively, referred to as purchasers ("Purchasers") to obtain and query historical trade and quote data ("historical data") representing the real-time data feed previously disseminated through the EDGA Exchange book by the Exchange. The historical data service will provide Purchasers with data in a user-friendly, flexible manner for specified fees. Such Service will include the following three separate offerings:

EdgeBook Cloud Replay

The EdgeBook Cloud Replay offering will allow Members and non-Members of the Exchange to download a Multicast or Unicast[4] formatted replay of each trading day. The downloaded file will contain the exact messages that were disseminated via the Exchange book feed during the day requested, including any orders, executions, cancellations and status messages. Purchasers of the offering will be able to choose to obtain data grouped by different periods, including a rolling thirty day subscription or a calendar month request of as many months as desired. The initial launch of the service on February 13, 2012, will provide data from June 2011 until the present. with additional releases offered thereafter to provide data from October 2010 to the present.

The Exchange is proposing to charge to Purchasers a fee of $500/month for the rolling thirty day replay[5] and, for a calendar month request, the Exchange is proposing to charge $500/month requested with a cap of $2500 if less than or equal to 1TB of data is requested. If a Purchaser requests more than 1TB of data, it will be charged an additional $2500 flat fee.[6]

EdgeBook Cloud FlexDownload

Purchasers of the EdgeBook Cloud FlexDownload ("FlexDownload") offering will be able to submit customized queries of trade or quote information for EDGA, and will be able to specify the time and symbol parameters, as well as other attributes to be retrieved. The requested data will be presented in a text file that can be easily imported into any tool for analysis. FlexDownload is a subscription-based offering that permits the Purchaser to choose a subscription level depending on the amount of data (in gigabytes) it estimates that it will download on a monthly basis. If a Purchaser downloads more data than is included in the subscription, an overage charge will be assessed for each additional gigabyte of data downloaded in that month.

Specifically, the Exchange is proposing to charge $750/month for up to and including 200GB of data, $1500/month for greater than 200GB of data but less than or equal to 800GB of data, and $2500/month for greater than 800GB but less than or equal to 1TB of data. For the first two levels ($750 and $1500/month for FlexDownload), the Exchange is proposing to charge a $5/GB overage charge for any overage beyond paid subscription. For the third level ($2500/month), the Exchange is proposing to charge a $3/GB overage charge beyond the paid subscription level.

EdgeBook Cloud Snapshot

The EdgeBook Cloud Snapshot offering[7] will provide standard queries that can be accessed on-demand directly by a user, or through an Application Programming Interface ("API")[8] that permits query results to be downloaded into a Purchaser's database or displayed on their Web site. Standard queries include various quote and trade requests, as well as a combined quote and trade view for a requested symbol. The offering is subscription-based; the subscription level will be determined

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] In computer networking, multicast is the delivery of a message or information to a group of destination computers simultaneously in a single transmission from the source. Unicast transmission is the sending of messages to a single network destination identified by a unique address. For EdgeBook Cloud, the protocol used is relevant in that the message formats vary between the Unicast and Multicast disseminated feeds, and subscribers to the Service may want to download historical data in the same format currently used to receive the real-time market data feed.

[5] There is no physical delivery associated with this particular EdgeBook Cloud Replay offering and, thus, no delivery charges will apply to it.

[6] Although the size of the dataset can vary from day to day based on market activity, the average size per day is 3.5GB, and the data is then compressed to roughly 25% of that size, or .88GB, based on the compression technique chosen by the Purchaser. The compressed data size is used for evaluating appropriate fees.

[7] There are no physical deliveries associated with any of the EdgeBook Cloud Snapshot offerings and, thus, no delivery charges will apply to them.

[8] An API facilitates information sharing by acting as a "go-between" that enables a software program to interact with other software.

based on the number of "Hits" [9] a Purchaser will use within the month. The number of Hits can increase based on the number of days or the Activity Level [10] of the security. The Activity Level is high, medium or low, based on the average quotes and trades per day (reviewed over a three month period), and relates to a multiplier that increases Hit quantity. For example, if a Purchaser queries a symbol for two days, the Purchaser would be charged for two days (or two Hits) multiplied by a high Activity Level of three, for a total of six Hits. If a Purchaser uses more Hits than subscribed to for two consecutive months, the Purchaser's subscription will be automatically upgraded to the next level for the upcoming month. However, the Purchaser will be able, at any time, to request a downgrade or upgrade to any other subscription level.

As described in the Exchange's fee schedule, the Exchange is proposing to charge $100 per 500 Hits per month, $250/2,500 Hits per month, $500/10,000 Hits/month, $750/50,000 Hits per month, and $1,000 per 250,000 Hits/month.

Historical data can be used to support many applications, including financial market research and analysis, back-testing of new trading strategies to gauge effectiveness, and quality control checks of changes to trading or data dissemination software. The Exchange proposes to make the Service readily available to its Members and non-Members to download historical data through secure Internet connections. To compensate the Exchange for the costs of storage and data dissemination associated with providing the Service, the Exchange proposes to charge users monthly fees for the ability to download and query the historical data. The proposed fees vary based on the type of offering provided, as set forth in Exhibit 5, and as described above. Furthermore, historical data can be retrieved in many forms, including an FTP download, a distribution to an Amazon S3 account or, for some of the subscription levels, a delivery of an external disk drive through postal mail and, if the Purchaser requests external disk drive delivery, it will be charged at cost for the media and the delivery charge. All such fees and costs relate to the provision of the Service offerings, *i.e.*, the ability to query the historical data in the manners offered. The data itself remains available at no cost to Members and non-Members of the Exchange.

Additional Discussion Regarding the Proposed Historical Data Services

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data services to the public. The Commission believed this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. EdgeBook Cloud appears to be precisely the sort of market data service that the Commission envisioned when it adopted Regulation NMS. The Service will offer Exchange-specific data in a new form not previously available to market data consumers, yet in a manner similar to that provided by other market centers.[11] It will allow market participants to purchase a Service that may be used to query historical data from the Exchange while at the same time enabling the Exchange to better cover its infrastructure costs and to improve its market technology and services. Finally, EdgeBook Cloud will better enable market participants to conduct Exchange-specific analyses to meet their needs.

The Exchange intends to implement the proposed rule change on February 13, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act in general and furthers the objectives of Section 6(b)(4) [12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Members and non-Members using its facilities. First, the Service is optional and fees charged for the Service will be the same for both Members and non-Members. Second, the Service will be provided in a variety of packages, including on an ongoing or an as-needed basis, intended to allow purchase of such access in the manner that best meets the needs of, and is most cost efficient for, the Purchaser. The fees reflect the differing offerings that any Purchaser may choose. In addition, higher fees are associated with increasing amounts of data (i.e., more gigabytes) requested by the Purchaser of the Service or more hits/month, depending on the Service, as described above, as increasing amounts of data requested require the Exchange to utilize more infrastructure/storage to accommodate the Purchaser's requests. Further, to the extent subscribers do subscribe to/purchase the Service, they will avoid the costs of storing the data themselves.[13] Third, the revenue generated by the Service will pay for the development, marketing, technical infrastructure and operating costs of an important tool for market participants and researchers to use for purposes of analysis and testing. Profits generated above these costs will help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream will allow the Exchange to offer an innovative Service at a reasonable rate, consistent with other SROs who provide market data products.[14]

The Exchange also believes that the proposed fees are consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules not be designed to unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the fees proposed for the Service are equitable because the Service is purely optional and because the data itself can be obtained at no cost whether or not a

[9] A Hit is defined as a query for a symbol/day.

[10] An Activity Level is a multiplier that is related to the total quantity of quotes and trades, on the Exchange, of a given security relative to the quantity of quotes and trades of all other securities trading on the Exchange. Activity Levels are High (3), Medium (2), or Low (1), and are determined on a monthly basis pursuant to a review of the previous three month's activity for the security. For a security to be considered Level 1, the combined quotes and trades on the Exchange must be less than .05% of the total quantity of quotes and trades on the Exchange for the calendar month. For a Level 2 security, the combined quotes and trades on the Exchange must be greater than .05% and less than .25% of the total for the calendar month. Finally, for a Level 3 security, the combined quotes and trades on the Exchange must be greater than .25% of the total for the calendar month. The security Activity Levels for each of the three previous months are then averaged to create the final Activity Level multiplier for the security. Direct Edge will notify Purchasers in advance of any changes to the percentage bands. Activity Levels are posted on the EdgeBook Cloud Web site so Purchasers may determine their potential costs for requesting data prior to doing so.

[11] See *infra*, footnote 14.

[12] 15 U.S.C. 78f(b)(4).

[13] The Exchange notes that this statement is in no way intended to relieve Purchasers of their obligations with respect to maintaining books and records pursuant to applicable securities laws.

[14] See Nasdaq Rule 7022. *See also www.nyxdoto.com* for information regarding NYSE OpenBook History and ArcaBook FTP, historical data products offered by the NYSE and NYSE Arca, respectively. *See also* Securities Exchange Act Release No. 55790 (May 21, 2007), 72 FR 29565 (May 29, 2007) (SR–NASDAQ–2007–039). *See also* Securities Exchange Act Release No. 52112 (July 22, 2005), 70 FR 43917 (July 29, 2005) (SR–NASD–2005–060). *See also* Securities Exchange Act Release No. 63351 (Nov. 19, 2010), 75 FR 73140 (Nov. 29, 2010) (SR–Phlx–2011–154). *See also* Securities Exchange Act Release No. 61885 (Apr. 9, 2010), 75 FR 20018 (Apr. 16, 2010) (SR–BATS–2010–002) (order approving proposed rule change to offer certain BATS Exchange Data Products).

[15] 15 U.S.C. 78f(b)(5).

Member or non-Member subscribes to the Service.[16] Purchase of the Service is not a prerequisite for participation on the Exchange, nor is membership to the Exchange a prerequisite to purchase of the Service. Only those Purchasers that deem the product to be of sufficient overall value and usefulness will purchase it. Moreover, the fees will apply uniformly to all Purchasers of the Service irrespective of whether the Purchaser is a Member of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will give Purchasers the ability to better organize and sort historical trade and quote data and is substantially similar to those of other exchanges.[19] Further, waiver of the operative delay would provide access to historical trade and quote data without delay. Therefore, the Commission designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2012–05 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–EDGA–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–05 and should be submitted on or before March 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4008 Filed 2–21–12; 8:45 am]

BILLING CODE 8011–01–P

[16] On a daily basis, a real-time data feed is disseminated by the Exchange. Members and non-Members of the Exchange can opt to gather such data and use it to create an historical record themselves rather than subscribe to the Service for the purpose of obtaining and querying historical data.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

[19] *See supra* note 14.

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66402; File No. SR–EDGX–2012–05]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Offering of a New Historical Data Feed Service to Members and Non-Members

February 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 10, 2012, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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 U.S. Securities and Exchange Commission (the "Commission") a proposed rule change to offer a new historical data feed service (the "Service") to Members[3] and non-Members of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

Exchange. In connection with the same, the Exchange is proposing to amend its fee schedule applicable to Members and non-Members of the Exchange pursuant to Exchange Rules 15.1(a) and (c). The Exchange intends to implement the proposed rule change on February 13, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to begin offering a new Service, namely EdgeBook Cloud, that will allow Members and non-Members of the Exchange (collectively, referred to as purchasers ("Purchasers") to obtain and query historical trade and quote data ("historical data") representing the real-time data feed previously disseminated through the EDGX Exchange book by the Exchange. The historical data service will provide Purchasers with data in a user-friendly, flexible manner for specified fees. Such Service will include the following three separate offerings:

EdgeBook Cloud Replay

The EdgeBook Cloud Replay offering will allow Members and non-Members of the Exchange to download a Multicast or Unicast [4] formatted replay of each trading day. The downloaded file will contain the exact messages that were disseminated via the Exchange book feed during the day requested, including any orders, executions, cancellations and status messages. Purchasers of the offering will be able to choose to obtain data grouped by different periods, including a rolling thirty day subscription or a calendar month request of as many months as desired. The initial launch of the service on February 13, 2012, will provide data from June 2011 until the present, with additional releases offered thereafter to provide data from October 2010 to the present.

The Exchange is proposing to charge to Purchasers a fee of $500/month for the rolling thirty day replay [5] and, for a calendar month request, the Exchange is proposing to charge $500/month requested with a cap of $2500 if less than or equal to 1TB of data is requested. If a Purchaser requests more than 1TB of data, it will be charged an additional $2500 flat fee.[6]

EdgeBook Cloud FlexDownload

Purchasers of the EdgeBook Cloud FlexDownload ("FlexDownload") offering will be able to submit customized queries of trade or quote information for EDGX, and will be able to specify the time and symbol parameters, as well as other attributes to be retrieved. The requested data will be presented in a text file that can be easily imported into any tool for analysis. FlexDownload is a subscription-based offering that permits the Purchaser to choose a subscription level depending on the amount of data (in gigabytes) it estimates that it will download on a monthly basis. If a Purchaser downloads more data than is included in the subscription, an overage charge will be assessed for each additional gigabyte of data downloaded in that month.

Specifically, the Exchange is proposing to charge $750/month for up to and including 200GB of data, $1500/month for greater than 200GB of data but less than or equal to 800GB of data, and $2500/month for greater than 800GB but less than or equal to 1TB of data. For the first two levels ($750 and $1500/month for FlexDownload), the Exchange is proposing to charge a $5/GB overage charge for any overage beyond paid subscription. For the third level ($2500/month), the Exchange is proposing to charge a $3/GB overage charge beyond the paid subscription level.

EdgeBook Cloud Snapshot

The EdgeBook Cloud Snapshot offering [7] will provide standard queries that can be accessed on-demand directly by a user, or through an Application Programming Interface ("API") [8] that permits query results to be downloaded into a Purchaser's database or displayed on their Web site. Standard queries include various quote and trade requests, as well as a combined quote and trade view for a requested symbol. The offering is subscription-based; the subscription level will be determined based on the number of "Hits" [9] a Purchaser will use within the month. The number of Hits can increase based on the number of days or the Activity Level [10] of the security. The Activity Level is high, medium or low, based on the average quotes and trades per day (reviewed over a three month period), and relates to a multiplier that increases Hit quantity. For example, if a Purchaser queries a symbol for two days, the Purchaser would be charged for two days (or two Hits) multiplied by a high Activity Level of three, for a total of six Hits. If a Purchaser uses more Hits than subscribed to for two consecutive months, the Purchaser's subscription will be automatically upgraded to the next level for the upcoming month. However, the Purchaser will be able, at

[4] In computer networking, multicast is the delivery of a message or information to a group of destination computers simultaneously in a single transmission from the source. Unicast transmission is the sending of messages to a single network destination identified by a unique address. For EdgeBook Cloud, the protocol used is relevant in that the message formats vary between the Unicast and Multicast disseminated feeds, and subscribers to the Service may want to download historical data in the same format currently used to receive the real-time market data feed.

[5] There is no physical delivery associated with this particular EdgeBook Cloud Replay offering and, thus, no delivery charges will apply to it.

[6] Although the size of the dataset can vary from day to day based on market activity, the average size per day is 3.5GB, and the data is then compressed to roughly 25% of that size, or .88GB, based on the compression technique chosen by the Purchaser. The compressed data size is used for evaluating appropriate fees.

[7] There are no physical deliveries associated with any of the EdgeBook Cloud Snapshot offerings and, thus, no delivery charges will apply to them.

[8] An API facilitates information sharing by acting as a "go-between" that enables a software program to interact with other software.

[9] A Hit is defined as a query for a symbol/day.

[10] An Activity Level is a multiplier that is related to the total quantity of quotes and trades, on the Exchange, of a given security relative to the quantity of quotes and trades of all other securities trading on the Exchange. Activity Levels are High (3), Medium (2), or Low (1), and are determined on a monthly basis pursuant to a review of the previous three month's activity for the security. For a security to be considered Level 1, the combined quotes and trades on the Exchange must be less than .05% of the total quantity of quotes and trades on the Exchange for the calendar month. For a Level 2 security, the combined quotes and trades on the Exchange must be greater than .05% and less than .25% of the total for the calendar month. Finally, for a Level 3 security, the combined quotes and trades on the Exchange must be greater than .25% of the total for the calendar month. The security Activity Levels for each of the three previous months are then averaged to create the final Activity Level multiplier for the security. Direct Edge will notify Purchasers in advance of any changes to the percentage bands. Activity Levels are posted on the EdgeBook Cloud Web site so Purchasers may determine their potential costs for requesting data prior to doing so.

any time, to request a downgrade or upgrade to any other subscription level.

As described in the Exchange's fee schedule, the Exchange is proposing to charge $100 per 500 Hits per month, $250/2,500 Hits per month, $500/10,000 Hits/month, $750/50,000 Hits per month, and $1,000 per 250,000 Hits/month.

Historical data can be used to support many applications, including financial market research and analysis, back-testing of new trading strategies to gauge effectiveness, and quality control checks of changes to trading or data dissemination software. The Exchange proposes to make the Service readily available to its Members and non-Members to download historical data through secure Internet connections. To compensate the Exchange for the costs of storage and data dissemination associated with providing the Service, the Exchange proposes to charge users monthly fees for the ability to download and query the historical data. The proposed fees vary based on the type of offering provided, as set forth in Exhibit 5, and as described above. Furthermore, historical data can be retrieved in many forms, including an FTP download, a distribution to an Amazon S3 account or, for some of the subscription levels, a delivery of an external disk drive through postal mail and, if the Purchaser requests external disk drive delivery, it will be charged at cost for the media and the delivery charge. All such fees and costs relate to the provision of the Service offerings, *i.e.*, the ability to query the historical data in the manners offered. The data itself remains available at no cost to Members and non-Members of the Exchange.

Additional Discussion Regarding the Proposed Historical Data Services

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data services to the public. The Commission believed this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. EdgeBook Cloud appears to be precisely the sort of market data service that the Commission envisioned when it adopted Regulation NMS. The Service will offer Exchange-specific data in a new form not previously available to market data consumers, yet in a manner similar to that provided by other market centers.[11] It will allow market participants to purchase a Service that may be used to query historical data from the Exchange while at the same time enabling the Exchange to better cover its infrastructure costs and to improve its market technology and services. Finally, EdgeBook Cloud will better enable market participants to conduct Exchange-specific analyses to meet their needs.

The Exchange intends to implement the proposed rule change on February 13, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act in general and furthers the objectives of Section 6(b)(4)[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Members and non-Members using its facilities. First, the Service is optional and fees charged for the Service will be the same for both Members and non-Members. Second, the Service will be provided in a variety of packages, including on an ongoing or an as-needed basis, intended to allow purchase of such access in the manner that best meets the needs of, and is most cost efficient for, the Purchaser. The fees reflect the differing offerings that any Purchaser may choose. In addition, higher fees are associated with increasing amounts of data (i.e., more gigabytes) requested by the Purchaser of the Service or more hits/month, depending on the Service, as described above, as increasing amounts of data requested require the Exchange to utilize more infrastructure/storage to accommodate the Purchaser's requests. Further, to the extent subscribers do subscribe to/purchase the Service, they will avoid the costs of storing the data themselves.[13] Third, the revenue generated by the Service will pay for the development, marketing, technical infrastructure and operating costs of an important tool for market participants and researchers to use for purposes of analysis and testing. Profits generated above these costs will help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream will allow the Exchange to offer an innovative Service at a reasonable rate, consistent with other SROs who provide market data products.[14]

The Exchange also believes that the proposed fees are consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules not be designed to unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the fees proposed for the Service are equitable because the Service is purely optional and because the data itself can be obtained at no cost whether or not a Member or non-Member subscribes to the Service.[16] Purchase of the Service is not a prerequisite for participation on the Exchange, nor is membership to the Exchange a prerequisite to purchase of the Service. Only those Purchasers that deem the product to be of sufficient overall value and usefulness will purchase it. Moreover, the fees will apply uniformly to all Purchasers of the Service irrespective of whether the Purchaser is a Member of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[11] *See infra*, footnote 14.

[12] 15 U.S.C. 78f(b)(4).

[13] The Exchange notes that this statement is in no way intended to relieve Purchasers of their obligations with respect to maintaining books and records pursuant to applicable securities laws.

[14] *See* Nasdaq Rule 7022. *See also www.nyxdata.com* for information regarding NYSE OpenBook History and ArcaBook FTP, historical data products offered by the NYSE and NYSE Arca, respectively. *See also* Securities Exchange Act Release No. 55790 (May 21, 2007), 72 FR 29565 (May 29, 2007) (SR–NASDAQ–2007–039). *See also* Securities Exchange Act Release No. 52112 (July 22, 2005), 70 FR 43917 (July 29, 2005) (SR–NASD–2005–060). *See also* Securities Exchange Act Release No. 63351 (Nov. 19, 2010), 75 FR 73140 (Nov. 29, 2010) (SR–Phlx–2011–154). *See also* Securities Exchange Act Release No. 61885 (Apr. 9, 2010), 75 FR 20018 (Apr. 16, 2010) (SR–BATS–2010–002) (order approving proposed rule change to offer certain BATS Exchange Data Products).

[15] 15 U.S.C. 78f(b)(5).

[16] On a daily basis, a real-time data feed is disseminated by the Exchange. Members and non-Members of the Exchange can opt to gather such data and use it to create an historical record themselves rather than subscribe to the Service for the purpose of obtaining and querying historical data.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will give Purchasers the ability to better organize and sort historical trade and quote data and is substantially similar to those of other exchanges.[19] Further, waiver of the operative delay would provide access to historical trade and quote data without delay. Therefore, the Commission designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2012–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–05 and should be submitted on or before March 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4007 Filed 2–21–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

[19] *See supra* note 14.

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

BIOTECH Holdings Ltd., California Oil & Gas Corp., Central Minera Corp., Chemokine Therapeutics Corp., and Global Precision Medical Inc.; Order of Suspension of Trading

February 17, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BIOTECH Holdings Ltd. because it has not filed any annual reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of California Oil & Gas Corp. because it has not filed any periodic reports since the period ended August 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Central Minera Corp. because it has not filed any annual reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chemokine Therapeutics Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Precision Medical Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 17, 2012, through 11:59 p.m. EST on March 2, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–4195 Filed 2–17–12; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7804]

Culturally Significant Objects Imported for Exhibition Determinations: "Elegance and Refinement: The Still-Life Paintings of Willem van Aelst"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Elegance and Refinement: The Still-Life Paintings of Willem van Aelst," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston, Houston, Texas, from on or about March 11, 2012, until on or about May 28, 2012, the National Gallery of Art, Washington, DC, from on or about June 24, 2012, until on or about October 14, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 15, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–4112 Filed 2–21–12; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on March 15, 2012, in Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

DATES: March 15, 2012, at 8:30 a.m.

ADDRESSES: North Office Building, Hearing Room 1 (Ground Level), North Street (at Commonwealth Avenue), Harrisburg, Pa. 17120

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; email: *srichardson@srbc.net.*

SUPPLEMENTARY INFORMATION: The business meeting will include actions on the following items: (1) A resolution concerning the use of lesser quality water; (2) approval for Susquehanna River Flow Management project expenditures; (3) a revision of the by-laws relating to the Commission's Investment Policy Statement; (4) a request for a partial fee waiver; (5) ratification/approval of grants/contracts (6) revision of FY–2013 Budget; (7) release for public review and comment of a Low Flow Protection Policy; and (8) Regulatory Program projects. Projects listed for Commission action are those that were the subject of a public hearing conducted by the Commission on February 16, 2012; notice of which was published in 77 FR 3321, January 23, 2012. Please note, in such notice, Project No. 34 under Supplementary Information, Additional Projects, identifies the project sponsor and facility as Water Treatment Solutions, LLC (South Mountain Lake) as being located in Wood Township, Lycoming County, Pa. The correct location is Woodward Township, Lycoming County, Pa.

Opportunity to Appear and Comment: Interested parties are invited to attend the business meeting and encouraged to review the Commission's Public Meeting Rules of Conduct, which are posted on the Commission's Web site, www.srbc.net. As identified in the public hearing notice referenced above, written comments on the Regulatory Program projects that were the subject of the public hearing, and are listed for action at the business meeting, were due on or before February 27, 2012. Written comments pertaining to any other matters listed for action at the business meeting may be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, email: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, email: *srichardson@srbc.net.* Any such comments mailed or electronically submitted must be received by the Commission on or before March 9, 2012, to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR parts 806, 807, and 808.

Dated: February 14, 2012.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2012–4027 Filed 2–21–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2012–0005]

Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comment.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates semiannual audits during each of the first 2 years of State participation and annual audits during each subsequent year of State participation. This notice announces and solicits comments on the sixth audit report for the California Department of Transportation (Caltrans).

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at *http://www.regulations.gov*, or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-

addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70, Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202) 366–2034, *Ruth.Rentch@dot.gov,* or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *Michael.Harkins@dot.gov*, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.gpo.gov/fdsys.*

Background

Section 6005 of SAFETEA–LU (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of the FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be presented in the form of an audit report and be made available for public comment. This notice announces the availability of the sixth audit report for Caltrans and solicits public comment on same.

Authority: Section 6005 of Pub. L. 109–59; 23 U.S.C. 315 and 327; 49 CFR 1.48.

Issued on: February 14, 2012.

Victor M. Mendez,

Administrator.

DRAFT

Surface Transportation Project Delivery Pilot Program Federal Highway Administration Audit of California Department of Transportation October 17–21, 2011

Overall Audit Opinion

Based on the information reviewed, it is the Federal Highway Administration (FHWA) audit team's opinion that as of October 21, 2011, the California Department of Transportation (Caltrans) continued to make progress toward meeting all responsibilities assumed under the Surface Transportation Project Delivery Pilot Program (Pilot Program), as specified in the Memorandum of Understanding (MOU) [1] with FHWA and in Caltrans' Application for Assumption (Application).

The FHWA commends Caltrans for its implementation of corrective actions in response to previous FHWA audit report findings. The FHWA also observed that Caltrans continued to identify and implement on a statewide Pilot Program basis best practices in use at individual Caltrans Districts (Districts).

With the completion of FHWA's sixth audit, Caltrans has now operated under the Pilot Program for 4 years. In compliance with the time specifications for the required audits, FHWA completed four semiannual audits in the first 2 years of State participation and is now conducting the annual audit cycle, which began with the fifth audit in July 2010 and includes this sixth audit in October 2011. Collectively, FHWA audits have included on-site audits to Caltrans headquarters offices, 10 of the 12 Caltrans Districts, and to the Caltrans Regional Offices supporting the remaining two Districts. The audit team continues to identify significant differences across the Districts in terms of implementing Pilot Program policies, procedures, and responsibilities. Examples of such differences include: resource availability and allocation; methods of implementation; methods of process evaluation and improvement; and levels of progress in meeting all assumed responsibilities. It is the audit team's opinion that the highly decentralized nature of operations across Districts continues to be a major contributing factor to the variations observed in the Pilot Program. As a result of this organizational structure, Caltrans Headquarters (HQ) must provide clear, consistent, and ongoing oversight over Districts' implementation and operation of the Pilot Program responsibilities. Implementation of a robust oversight program will help foster the exchange of information and the sharing of best practices and resources between Districts and will put the entire organization in a better position to more fully implement all assumed responsibilities and meet all Pilot Program commitments.

Due to the multiyear timeframes associated with most complex and controversial projects, the full lifecycle of the environmental review aspect of project development (proceeding from initiation of environmental studies and concluding with the issuance of a Record of Decision (ROD) or equivalent decision document) has yet to be realized within the Pilot Program to date. Caltrans continues to gain experience in understanding the resource requirements and processes necessary to administer its Program. It is the audit team's opinion that Caltrans needs to continue to refine its approaches and use of resources to meet all Pilot Program commitments, especially given the increasing resource demands associated with managing ever-more complex and controversial projects under the Pilot Program under recent resource constraints.

Requirement for Transition Plan

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) Section 6005(a) established the Pilot Program, codified at 23 U.S.C. 327. Under the provisions of 23 U.S.C 327(i)(1), as enacted in SAFETEA–LU, "the program shall terminate on the date that is 6 years after the date of enactment of this section," which was August 10, 2011. However, section 2203(c) of the Surface Transportation Extension Act of 2010, Part II, Public Law 111–322, amended 23 U.S.C 327 (i)(1) to require the Pilot Program to terminate seven years after the date of the enactment of SAFETEA–LU or August 10, 2012. The MOU between FHWA and Caltrans was amended

[1] Caltrans MOU between FHWA and Caltrans available at: *http://environment.fhwa.dot.gov/strmlng/safe_cdot_pilot.asp.*

August 8, 2011, to include this new date and to update related provisions.

Effective Practices

The FHWA audit team observed the following effective practices during the sixth audit:

1. The creation of a statewide Community Impacts working team that holds monthly calls to share Community Impact Assessment (CIA) and Environmental Justice information. Caltrans has also developed new CIA guidance.

2. Improved level of consistency in implementing processes and documenting information, largely due to the use of the Standard Environmental Reference (SER) and templates.

3. Improved Section 4(f) de minimis letters to the officials with jurisdiction, with good examples from local agencies in District 4.

4. Increased access to training, including the availability of on-demand training, PowerPoint, Webinars and videoconferencing.

5. Complete and well-organized project files in District 10.

6. Assumptions and Risk statements included in early project development/scoping that list possible consequences, effects and costs of not complying with all environmental requirements and procedures.

7. Caltrans' *Standard Specifications for Construction 2010* (recently released) requires environmental stewardship to be included in all construction contracts, which should aid in environmental mitigation implementation.

8. The new Caltrans Standard Tracking and Exchange Vehicle for Environmental (STEVE) supports tracking of the environmental review process and sharing of project status across project teams and includes an internal dispute resolution process.

Background

The Pilot Program allows the Secretary of Transportation (Secretary) to assign, and the State to assume, the Secretary's responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and is liable for carrying out the responsibilities it has assumed, in lieu of FHWA.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audit process is four-fold: (1) To assess a Pilot State's compliance with the required MOU and applicable Federal laws and policies; (2) to collect information needed to evaluate the success of the Pilot Program; (3) to evaluate Pilot State progress in meeting its performance measures; and (4) to collect information for use in the Secretary's annual Report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report published in the **Federal Register**. This audit report must be made available for public comment, and FHWA must respond to public comments received no later than 60 days after the date on which the period for public comment closes.

Scope of the Audit

This is the sixth FHWA audit of Caltrans participation in the Pilot Program. The on-site portion of the audit was conducted in California from October 17 through October 21, 2011. As required in SAFETEA–LU, each FHWA audit must assess compliance with the roles and responsibilities assumed by the Pilot State in the MOU. The audit also includes recommendations to assist Caltrans in successful participation in the Pilot Program.

Prior to the on-site audit, FHWA completed telephone interviews with Federal resource agency staff at the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service (FWS), the National Park Service, the National Oceanic and Atmospheric Administration, the Advisory Council on Historic Preservation, and the Environmental Protection Agency. The on-site audit included visits to the Caltrans Offices in District 2 (Redding), District 3/North Region (Marysville), District 4 (Oakland), District 6 (Fresno), District 10 (Stockton), and Headquarters (Sacramento).

This report documents findings within the scope of the audit as of the completion date of the on-site audit on October 21, 2011.

Audit Process and Implementation

The intent of each FHWA audit completed under the Pilot Program is to ensure that the Pilot State complies with the commitments in its MOU with FHWA. The FHWA does not evaluate specific project-related decisions made by the State; these decisions are the sole responsibility of the Pilot State. However, the FHWA audit scope does include the review of the processes and procedures (including documentation) used by the Pilot State to reach project decisions in compliance with MOU Section 3.2.

In addition, Caltrans committed in its Application (incorporated by reference in MOU Section 1.1.2) to implement specific processes to strengthen its environmental procedures in order to assume the responsibilities assigned by FHWA under the Pilot Program. The FHWA audits review how Caltrans is meeting each commitment and assess Pilot Program performance in the core areas specified in the *Scope of the Audit* section of this report.

The Caltrans' Pilot Program commitments address:

- Organization and Procedures under the Pilot Program;
- Expanded Quality Control Procedures;
- Independent Environmental Decisionmaking;
- Determining the NEPA Class of Action;
- Consultation and Coordination with Resource Agencies;
- Issue Identification and Conflict Resolution Procedures;
- Recordkeeping and Retention;
- Expanded Internal Monitoring and Process Reviews;
- Performance Measures to Assess the Pilot Program;
- Training to Implement the Pilot Program;
- Legal Sufficiency Review.

The FHWA team for the sixth audit included representatives from the following offices or agencies:

- FHWA Office of Project Development and Environmental Review;
- FHWA Office of the Chief Counsel;
- FHWA Alaska Division Office;
- FHWA Resource Center Environmental Team;
- Volpe National Transportation Systems Center;
- U.S. FWS.

During the onsite audit, the audit team interviewed more than 60 staff from 5 Caltrans District and HQ offices. The audit team also reviewed project files and records for over 55 projects managed by Caltrans under the Pilot Program.

The FHWA acknowledges that Caltrans identified specific issues during its sixth self-assessment performed under the Pilot Program (required by MOU section 8.2.6), and is working on corrective actions to address the identified issues. Some issues described in the Caltrans self-assessment may overlap with FHWA findings identified in this audit report.

In accordance with MOU Section 11.4.1, FHWA provided Caltrans with a 30-day comment period to review this draft audit report. The FHWA reviewed comments received from Caltrans and revised sections of the draft report, where appropriate, prior to publishing it in the **Federal Register** for public comment.

Limitations of the Audit

The conclusions presented in this report are opinions based upon interviews of selected persons knowledgeable about past and current activities related to the execution of the Pilot Program at Caltrans, and a review of selected documents over a limited time period. The FHWA audit team's ability to conduct each audit and make determinations of Caltrans' compliance with assumed responsibilities and commitments under the Pilot Program has been further limited by the following:

- Select Districts visited by the FHWA audit team. The FHWA audit team has not visited each District during the audit process. Each audit (including this audit) has consisted of visits to Districts with significant activity under the Pilot.
- Caltrans staff availability during audits. Some Caltrans staff selected to be interviewed by the audit team were out of the office and unavailable to participate in the onsite audit, including participation in scheduled interviews, despite Caltrans having been notified ahead of time. This limited the extent of information gathering.
- Limited scope of Pilot Program project development activity. Caltrans has not operated under the Pilot Program for a sufficient period of time to manage the full lifecycle of most Environmental Impact Statements (EIS) and other complex environmental documents. Therefore, FHWA is not yet able to fully determine how Caltrans will comply with its responsibilities assumed under the Pilot Program for these project situations.
- Insufficient data to determine time savings reported by Caltrans in the completion of environmental documents. Due to the relatively short period of time that the Pilot Program has been in place, Caltrans has not completed the environmental process for a sufficient number of projects of varying complexities to adequately support a determination on the potential time savings resulting from participation in the Pilot Program.
- Continued errors in the quarterly reports. As has been the case in every audit, the quarterly reports prepared by Caltrans listing environmental approvals and decisions made under the Pilot Program continue to contain omissions and errors. It is difficult for FHWA to exercise full oversight on Pilot Program projects without a complete accounting of all NEPA documents produced under the Pilot.

Status of Findings Since the Last Audit (July 2010)

As part of the sixth audit, FHWA evaluated the corrective actions implemented by Caltrans in response to the "Deficient" and "Needs Improvement" findings in the fifth FHWA audit report.

Deficient Audit Finding Status

1. Quarterly Reports—The quarterly reports Caltrans provided to FHWA under MOU Section 8.2.7 continued to include inaccuracies related to environmental document approvals and decisions made under the Pilot Program. The audit team acknowledges that Caltrans has recently implemented the STEVE environmental database system on a statewide basis to assist in the development of a comprehensive database of environmental projects and milestones.

2. Section 4(f) Documentation—As noted in the past two audits, inconsistencies in Section 4(f) compliance and documentation have been observed by the audit team. The FHWA acknowledges that Caltrans continues to provide Section 4(f) training and assistance to the Districts to improve the understanding of the Section 4(f) statute and regulations. However, training implementation is inconsistent with staff implementing Section 4(f) across Districts.

3. Quality Assurance/Quality Control (QA/QC) Certification Process—Project file reviews completed during the sixth audit continued to identify incorrect and incomplete QC certification forms. Caltrans continues to address inadequacies in this process through staff-specific training when inconsistencies are identified, most notably during the self-assessment process.

Needs Improvement Audit Findings Status

1. Maintenance of Project and General Administrative Files—Caltrans has instituted specific procedures for maintaining project files in accordance with the Uniform Filing System and has provided training on these procedures. Inconsistencies in the application of these procedures, reported in previous audit findings, were also identified in this audit.

2. Performance Measure—FHWA recommended that Caltrans share with FHWA the specific agencies' rating information so that specific issues could be identified. Caltrans has provided this information to FHWA.

3. Coordination with Resource Agencies—Conversations with Federal resource agencies prior to the onsite audit indicated that relationships between the agencies and Caltrans are generally considered to be effective; however, the audit team noted an issue regarding insufficient information being initially submitted to the resource agencies.

4. Procedural and Substantive Requirements—There were identified instances of incomplete documentation regarding the Endangered Species Act Section 7 process. This was also an area of irregularities identified in the Caltrans Self Assessment. Section 7 compliance continues to be a topic addressed by the Biological Consultancy group and, included as part of the STEVE, there is an elevation process for Section 7 conflicts.

5. Re-evaluation Process—Project file reviews and staff interviews continue to indicate varying degrees of compliance with the re-evaluation process and procedures.

6. Section 4(f) Consistency Issue—Project file reviews and interviews with Caltrans staff confirmed continuing inconsistencies in the implementation of the Section 4(f) process as well as with a general understanding required in carrying out Section 4(f) provisions. The audit team does acknowledge that a Section 4(f) evaluation training on demand module was recently posted for use by Caltrans staff.

7. Training—As in past audits, the audit team observed inconsistencies in the use of tools to identify training needs, ensure training is received, and to track employees' training histories. The audit team also determined there was no method for employees to track completion of any online training available on the Caltrans Web site.

Findings Definitions

The FHWA audit team carefully examined Pilot Program areas to assess

compliance in accordance with established criteria in the MOU and Application. The time period covered by this audit report is from the start of the Caltrans Pilot Program (July 1, 2007) through completion of the sixth onsite audit (October 21, 2011) with the focus of the audit on the most recent 15 month period. This report presents audit findings in three areas:

- *Compliant*—Audit verified that a process, procedure or other component of the Pilot Program meets a stated commitment in the Application and/or MOU.
- *Needs Improvement*—Audit determined that a process, procedure or other component of the Pilot Program as specified in the Application and/or MOU is not fully implemented to achieve the stated commitment or the process or procedure implemented is not functioning at a level necessary to ensure the stated commitment is satisfied. Action is recommended to ensure success.
- *Deficient*—Audit was unable to verify if a process, procedure or other component of the Pilot Program met the stated commitment in the Application and/or MOU. Action is required to improve the process, procedure or other component prior to the next audit;

or

Audit determined that a process, procedure or other component of the Pilot Program did not meet the stated commitment in the Application and/or MOU. Corrective action is required prior to the next audit;

or

Audit determined that for a past Needs Improvement finding, the rate of corrective action has not proceeded in a timely manner; is not on the path to timely resolution of the finding.

Summary of Findings—October 2011

Compliant

Caltrans was found to be compliant in meeting the requirements of the MOU for the key Pilot Program areas within the scope and the limitations of the audit, with the exceptions noted in the Deficient and Needs Improvement findings in this audit report set forth below.

Needs Improvement

(N1) *Training*—Inconsistent Level of Training for Staff—MOU Section 12.1.1 requires Caltrans to ensure that its staff is properly trained and that training will be provided "in all appropriate areas with respect to the environmental responsibilities Caltrans has assumed." Section 4.2.2 of the MOU also requires that Caltrans maintain adequate staff capability to effectively carry out the responsibilities it has assumed.

The audit team found the following inconsistencies across the Districts regarding the level of needed trainings received by Caltrans staff:

(a) Several of the Section 4(f) District Points of Contact (POC) have very little, if any experience with writing or reviewing a Section 4(f) document and have had little training in Section 4(f). The audit team learned that the specific roles and responsibilities for the POCs had not yet been determined. Also, it has not been decided if there will be the formation of a working/peer group of these POCs or how they should proceed in becoming "expert" in this area;

(b) The audit team learned through interviews that the number and variety of available online on-demand trainings have increased. However, the lack of a system to track those taking these trainings creates difficulties in identifying staff training needs;

(c) Interviews with staff reflected instances where staff had to cancel their attendance at trainings due to resource limitations, or schedule demands; and

(d) Interviews with staff indicated a large staff turnover in certain Districts. The loss of experienced staff increases the importance of the training needed for new employees, which is uncertain due to resource restrictions in these same Districts.

(N2) *Training*—Inconsistent Understanding of Required Processes—MOU Section 4.2.2 requires Caltrans to maintain adequate organizational and staff capacity to effectively carry out the responsibilities it has assumed under MOU Section 3. Good communication among all staff levels is essential for this to be accomplished. The following inconsistencies in lack of knowledge and inconsistent understanding were noted during interviews with Caltrans staff:

(a) Interviews with Caltrans staff in varying positions in three Districts revealed a lack of understanding of the FHWA fiscal constraint requirements and its relationship to NEPA documents;

(b) A majority of Caltrans staff members interviewed indicated that there is a lack of understanding of the definitions for the following Section 4(f) terms: Section 4(f) use; temporary occupancy; avoidance alternatives; least overall harm analysis; and constructive use of a Section 4(f) resource.

(c) Interviews with Caltrans staff reflected that there was a lack of understanding for determining a de minimis impact on a Section 4(f) resource;

(d) Several Caltrans staff members interviewed indicated a lack of knowledge regarding the identification of officials with jurisdiction over Section 4(f) resources; and

(e) Interviews with Caltrans District 4 staff reflected that there was a lack of communication among all staff concerning the District's new requirement to hold public hearings for all EAs.

(N3) *Air Quality Conformity Determinations*—Section 8.5.1 of the MOU and SER Chapter 38 require Caltrans staff to document the air quality conformity analysis for each project by submitting a request to FHWA for a formal conformity determination, as required by 23 U.S.C. 327(a)(2)(B)(ii)(I). The request for the conformity determination should be submitted to FHWA as soon as possible after the preferred alternative is identified. The FHWA conformity determination must be received before the final NEPA action is completed.

Through interviews and project file reviews, the audit team identified an environmental assessment (EA) that was approved without a project-level conformity determination letter from FHWA. This determination letter was later obtained from FHWA and a re-evaluation was performed by Caltrans and included in the project file.

Deficient

(D1) *Reports Listing Approvals and Decisions* (i.e., Quarterly Reports)—MOU Section 8.2.7 requires Caltrans to submit a report listing all Pilot Program approvals and decisions made with respect to responsibilities assumed under the MOU with FHWA (each quarter for the first 2 years and no less than every 6 months after the first 2 years). Caltrans has chosen to continue to provide quarterly reports to FHWA after the first 2 years. As was identified in every previous FHWA audit report, inaccurate project reporting was identified in this audit and it continues to be an ongoing issue affecting the quarterly report process.

Among the reporting errors identified in this audit were the omission of two completed decisions—one ROD and one Finding of No Significant Impact (FONSI).

The FHWA acknowledges that a new statewide database (STEVE) has recently been implemented throughout the Districts, and Caltrans anticipates that this new system will improve the accuracy of information provided in the quarterly reports provided to FHWA.

(D2) *QA/QC Certification Process*—MOU Section 8.2.5 and SER Chapter 38 require Caltrans staff to review each

environmental document in accordance with the policy memorandum titled, "*Environmental Document Quality Control Program under the NEPA Pilot Program*" (July 2, 2007). As was identified in past audits, incomplete and incorrectly completed QC certification forms continued to be identified in this audit. During project file reviews by the audit team, the following instances of incomplete or incorrect QC certification forms were observed:

(a) Four Internal QC certification forms (for three projects) were completed and signed and dated by reviewers after the approval date of the document;

(b) One class of action determination form was signed on the same date that the document was approved;

(c) Five QC certification forms contained undated review signatures or the signatures were not obtained in the proper sequence in accordance with the Caltrans established QA/QC processes. This included four projects where external QC certification forms contained signatures that were obtained after the internal QC certification form signatures; and

(d) Five QC certification forms were missing the signatures of required reviewers.

(D3) *QA/QC Certification Process*—MOU Section 8.2.5 and SER Chapter 38 require Caltrans staff to review each environmental document in accordance with the policy memorandum titled, "*Environmental Document Quality Control Program under the NEPA Pilot Program*" (July 2, 2007). The policy memorandum included the revision to the quality control program that includes the addition of a NEPA QC Review. The purpose of this review component is to ensure that the environmental document complies with the FHWA policies and guidance and the requirements of all applicable Federal laws, executive orders, and regulations.

Interviews with Caltrans staff and project file reviews in one District indicated that a NEPA QC reviewer was directed by the Office Chief of Environmental Affairs and the District Director to sign the internal certification form without having reviewed the final version of the environmental document in order to meet the project schedule. The NEPA QC reviewer had noted in the project file that there were two items, previously identified to be addressed, that had not yet been addressed in the document that was signed.

(D4) *Re-evaluation Process*—MOU Section 5.1 requires Caltrans to be subject to the same procedural and substantive requirements that apply to DOT in carrying out the responsibilities assumed under the Pilot Program. This includes the process and documentation for conducting NEPA re-evaluations to comply with 23 CFR 771.129. Additionally, SER Chapter 33 discusses revalidations and re-evaluations. As in past audits, project file reviews and staff interviews identified varying degrees of understanding of, and compliance with, these procedures and the improper use of re-evaluation documentation to serve another project development purpose. Project file reviews identified the following inconsistencies with regards to re-evaluations:

(a) A re-evaluation is done to determine if the approved environmental document or the Categorical Exclusion (CE) designation remains valid. In the re-evaluation process, the original decision and analysis needs to be reviewed for its validity. A re-evaluation was used to increase the scope of the original EA/FONSI. The FHWA re-evaluation process does not accommodate such an approach. The supporting documentation and project files for this project were not available for review; and

(b) In a second project, the NEPA document was identified in the Quarterly Report as a re-evaluation. This project was identified as an intersection improvement that was to be added to a larger project, already under construction. The project file contained both re-evaluation forms and CE checklist forms. Under NEPA, the project should have been a stand-alone CE, as it was not a part of the original project.

(D5) *Section 4(f) Documentation*—MOU Section 5.1.1 affirms that Caltrans is subject to the same procedural and substantive requirements that apply to DOT in carrying out the responsibilities assumed under the Pilot Program. The SER Chapter 20, *Section 4(f) and Related Requirements*, sets forth procedures for documenting impacts to Section 4(f) properties in Caltrans-assigned environmental documents. As was also noted in the fourth and fifth FHWA audits of the Pilot Program, project file reviews and interviews with staff conducted during this audit identified inconsistencies with the implementation and documentation requirements for carrying out the Section 4(f) provisions.

In the case of Section 4(f) evaluations, the audit team found the following:

(a) Two of the three evaluations did not contain a required Section 4(f) avoidance alternative analysis.

(b) Two of the three evaluations did not provide a required Least Overall Harm Analysis.

(D6) *Statement Regarding Assumption of Responsibility*—MOU section 3.2.5 requires language regarding Caltrans' assumption of responsibility under 23 U.S.C. 327 be included on the cover page of each environmental document for all assumed Pilot Program projects. The audit teams' project file reviews found the following inconsistencies with this requirement:

(a) The cover page for one EA reviewed during the audit did not include this required statement;

(b) The cover page for one Final EIS had been modified from the language agreed to in the MOU; and

(c) The cover page for three California Environmental Quality Act only document contained the FHWA assumption statement, even though there was no FHWA involvement in this document.

[FR Doc. 2012–3977 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–0017; FMCSA–2007–29019; FMCSA–2007–28695; FMCSA–2008–0106; FMCSA–2009–0154; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2009–0321]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 36 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 2, 2012. Comments must be received on or before March 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–

2007–0017; FMCSA–2007–29019; FMCSA–2007–28695; FMCSA–2008–0106; FMCSA–2009–0154; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2009–0321, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 36 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 36 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

William M. Arbogast (FL), Cris D. Bush (TN), John E. Cain (NM), Billy C. Chenault (NM), Eugene Contreras (NM), Jim L. Davis (NM), David E. Evans (NC), Nigel L. Farmer (CT), Wayne W. Ferguson (VA), Randy M. Garcia (NM), John A. Graham (PA), Henry J. Gregoire, Jr. (MN), Jason L. Hoovan (UT), Amos W. Hulsey (AL), Guy A. Lanham (FL), Curtis M. Lawless (VA), James M. McCormick (ID), Joseph F. McIntyre, Jr. (GA), Richard K. Mell (VA), Glen A. Miller (VA), Shane W. Mincey (AL), Russell L. Moyers (WV), Millard F. Neace, II (WV), William E. Norris (NC), Frank L. Ortolani (OH), Willie L. Parks (CA), Paul D. Prillaman (VA), Scott Randol (MO), Clarence J. Robishaw, Jr (NY), Miguel A. Sanchez (NM), Dennis R. Schneider (NM), James Vickery (KY), Norman J. Watson (NC), Lewis H. West, Jr. (MA), Billy R. Wilkey (TX), Reginald J. Wuethrich (IL).

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 36 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (72 FR 46261; 72 FR 54972; 72 FR 58362; 72 FR 67340; 72 FR 67344; 73 FR 1395; 73 FR 35194; 73 FR 48275; 74 FR 37295; 74 FR 48343; 74 FR 57553; 74 FR 60022; 74 FR 65842; 74 FR 65845; 75 FR 1835; 75 FR 4623; 75 FR 9482). Each of these 36 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these

drivers submit comments by March 23, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 36 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 26, 2012.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2012–3995 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–12844; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2009–0291; FMCSA–2009–0321]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 15, 2012. Comments must be received on or before March 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2002–12844; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2009–0291; FMCSA–2009–0321, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 10 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 10 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:
Gene Bartlett, Jr. (VT),
Ronald D. Boeve (MI),
Marland L. Brassfield (TX),
Dale M. Cannon (OR),
Jamie French (NC),
Wayne H. Holt (UT),
Billy R. Jefferies (WV),
Carlos A. MendezCastellon (VA),
Gary N. Wilson (UT),
William B. Wilson (KY).

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's

report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 10 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (67 FR 68719; 68 FR 2629; 70 FR 7545; 71 FR 4194; 71 FR 13450; 72 FR 39879; 72 FR 40362; 72 FR 52419; 73 FR 9158; 74 FR 64124; 74 FR 65842; 75 FR 1451; 75 FR 1835; 75 FR 9482; 75 FR 9484;). Each of these 10 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 23, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 10 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 10, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3994 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0367]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt sixteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective February 22, 2012. The exemptions expire on February 21, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On January 5, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from seventeeen individuals and requested comments from the public (77 FR 533). The public comment period closed on February 5, 2012, and no comments were received.

One of the applicants, Mr. Randall T. Buffkin (NC) no longer requires the use of insulin and therefore does not need a Federal diabetes exemption.

FMCSA has evaluated the eligibility of the sixteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These sixteen applicants have had ITDM over a range of 1 to 19 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the January 5, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the sixteen exemption applications, FMCSA exempts, Gary L. Camden (IN), Loren A. Cox (NY), Dennis D. Dingman (CO), Daryl F. Gilbertson (WI), Alfred Gutierrez, II (OK), Matthew D. Hulse (KS), Jeremy L. Igert (MS), Neil E. Karvonen (WA), Damon A. Kruger (CO), Bryan R. Lee (MI), Earl T. Morton (VA), Richard A. Norstebon (ND), Donald J. Olbinski (IL), Kevin E. Risley (IN), Steven L. Schmenk (OH) and Benny L. Westbrooks (TX) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: February 10, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3979 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0325]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twelve individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective February 22, 2012. The exemptions expire on February 21, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m.

Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On January 5, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 539). That notice listed twelve applicants' case histories. The twelve individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the twelve applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The twelve exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, keratoconus, reduced vision, macular scaring, retinal vein occlusion and a corneal scar. In most cases, their eye conditions were not recently developed. Nine of the applicants were either born with their vision impairments or have had them since childhood. The three individuals sustained their vision conditions as adults and have had them for a period of 5 to 31 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these twelve drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 2 to 26 years. In the past 3 years, none of the drivers were involved in crashes, and none were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 5, 2012 notice (77 FR 539).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on

that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the twelve applicants, none of the drivers were involved in a crash and none were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the twelve applicants listed in the notice of January 5, 2012 (77 FR 539).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the twelve individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the twelve exemption applications, FMCSA exempts Rene Amaya (NM), Brian K. Cline (NC), Robert R. Judd (IN), Mickey E. Lawson (NC), Robbery J. Nelson (NC), Thomas M. Nubert (NC), Terri D. Payne (KY), Michael C. Reese (GA), Mark C. Reineke (NM), Robert T. Reynolds (OH), Lawrence D. Ventimiglia (NV) and Chadwick L. Wyatt (NC) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: February 10, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3976 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0378]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from twelve individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision requirement.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0378 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday

through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The twelve individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Robert J. Abbas

Mr. Abbas, age 62, has had amblyopia in his left eye since birth. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/100. Following an examination in 2011, his ophthalmologist noted, "In my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Abbas reported that he has driven tractor-trailer combinations for 31 years, accumulating 2.3 million miles. He holds a Class A Commercial Driver's License (CDL) from Minnesota. His driving record for the last 3 years shows no crashes and one conviction for speeding in a Commercial Motor Vehicle (CMV); he exceeded the speed limit by 13 mph.

Paul T. Browning

Mr. Browning, 50, has a severed optic nerve in his right eye due to a traumatic injury sustained in 1995. The best corrected visual acuity in right eye is light perception and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, "It is my opinion after examining Mr. Browning that visually he is able to operate a commercial motor vehicle in a safe and prudent manner." Mr. Browning reported that he has driven straight trucks for 13 years, accumulating 273,000 miles. He holds a Class B CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert P. Clark

Mr. Clark, 66, has a detached retina in his left eye due to a traumatic injury sustained in 1967. The best corrected visual acuity in right eye is 20/20 and in his left eye, hand motion vision. Following an examination in 2011, his optometrist noted, "It is my opinion that Mr. Clark has sufficient vision to operate a commercial vehicle." Mr. Clark reported that he has driven straight trucks for 45 years, accumulating 1.1 million miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; driving a CMV while disqualified.

Carey C. Earwood

Mr. Earwood, 67, has a corneal scar in his left eye due to an injury sustained 55 years ago. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/70. Following an examination in 2011, his optometrist noted, "Based on the results of the examination, Mr. Carey Earwood was found to have sufficient vision to safely operate a motor vehicle." Mr. Earwood reported that he has driven tractor-trailer combinations for 40 years, accumulating 4.4 million miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Cheryl G. Johnson

Mrs. Johnson, 66, has had complete loss of vision in her left eye since birth. The best corrected visual acuity in right eye 20/20. Following an examination in 2011, his ophthalmologist noted, "In my opinion Mrs. Johnson has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mrs. Johnson reported that she has driven buses trucks for 24 years, accumulating 288,000 miles. She holds a chauffeur's license from Indiana. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevan J. Larson

Mr. Larson, 28, has had macular scarring in his left eye since birth. The best corrected visual acuity in his right eye is 20/15, and in his left eye, count-finger vision. Following an examination in 2011, his optometrist noted, "In my medical opinion, and based upon results of Kevan's vision examination, I believe he has sufficient vision capabilities to perform the driving tasks required to operate a commercial vehicle." Mr. Larson reported that he has driven straight trucks for 10 years, accumulating 280,000 miles. He holds a Class D operator's license from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Melvin D. Rolfe

Mr. Rolfe, 57, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, "I feel he has sufficient vision to perform the driving tasks of a commercial vehicle." Mr. Rolfe reported that he has driven straight trucks for 4 years, accumulating 80,000 miles. He holds a Class D

operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gilbert M. Rosas

Mr. Rosas, 44, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2011, his optometrist noted, "I certify that patient Gilbert Rosas has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rosas reported that he has driven straight trucks for 14 years, accumulating 1.1 million miles and tractor-trailer combinations for 3 years, accumulating 150,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kim A. Shaffer

Mr. Shaffer, 61, has a prosthetic right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2011, his optometrist noted, "This patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Shaffer reported that he has driven tractor-trailer combinations for 40 years, accumulating 1.4 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry W. Slinker

Mr. Slinker, 59, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, "In my opinion, he should be able to perform the driving tasks required to operate a commercial vehicle." Mr. Slinker reported that he has driven tractor-trailer combinations for 2 years, accumulating 280,000 miles and buses for 2 years, accumulating 41,600 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lonnie J. Supanchick

Mr. Supanchick, 59, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25, and in his left eye, 20/150. Following an examination in 2011, his optometrist noted, "In my opinion, Mr. Lonnie Supanchick has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Supanchick reported that he has driven straight trucks for 11 years, accumulating 137,500 miles and tractor-trailer combinations for 10 years, accumulating 175,000 miles. He holds a Class B CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald W. Warner

Mr. Warner, 20, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, "In my professional opinion, Mr. Warner has sufficient vision to operate a commercial vehicle and to perform the driving tasks required." Mr. Warner reported that he has driven straight trucks for 32 years, accumulating 480,000 miles and tractor-trailer combinations for 32 years, accumulating 1.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business March 23, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: February 10, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3991 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0382]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 17 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0382 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day,

365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 17 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Rick J. Birdsall

Mr. Birdsall, age 41, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Birdsall understands diabetes management and monitoring, has stable control of his diabetes using insulin; and is able to drive a Commercial Motor Vehicle (CMV) safely. Mr. Birdsall meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Nebraska.

Robert E. Bruso

Mr. Bruso, 58, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bruso understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bruso meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

Roy Crabtree

Mr. Crabtree, 72, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Crabtree understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crabtree meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Steven L. Drake

Mr. Drake, 43, has had ITDM since 2002. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Drake understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Drake meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Benjamin J. Duea

Mr. Duea, 37, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Duea understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Duea meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Steven E. Greer

Mr. Greer, 58, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Greer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Greer meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Jonathan E. Hunsaker

Mr. Hunsaker, 55, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or

more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hunsaker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hunsaker meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

Michael L. Jones

Mr. Jones, 34, has had ITDM since 2003. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

William D. Larsen

Mr. Larsen, 63, has had ITDM since 2000. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Larsen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Larsen meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Michael W. Morofsky

Mr. Morofsky, 43, has had ITDM since 1969. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morofsky understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morofsky meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Antonio R. Ragin

Mr. Ragin, 38, has had ITDM since 1997. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ragin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ragin meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Lee A. Richardson

Mr. Richardson, 55, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Richardson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Richardson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Carolina.

Michael R. Simmons

Mr. Simmons, 61, has had ITDM since 2000. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Simmons understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Simmons meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Tennessee.

William W. Simmons

Mr. Simmons, 58, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Simmons understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Simmons meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Florida.

Ronald O. Snyder

Mr. Snyder, 67, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Snyder understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Snyder meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Douglas J. Wood

Mr. Wood, 50, has had ITDM since 2007. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Richard P. Wright

Mr. Wright, 31, has had ITDM since 1998. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wright understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wright meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Oregon.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the **DATE** section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: February 9, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3996 Filed 2–21–12; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0054; Notice 2]

Cooper Tire & Rubber Tire Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition.

SUMMARY: Cooper Tire & Rubber Tire Company, (Cooper)[1], has determined that approximately 6,964 passenger car replacement tires manufactured between January 23, 2011 and March 26, 2011, do not fully comply with paragraph S5.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper has filed an appropriate report dated March 31, 2011, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Cooper's petition was published, with a 30-day public comment period, on May 17, 2011, in the **Federal Register** (76 FR 28502). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number "NHTSA–2011–0054."

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Affected are approximately 6,964 size LT285/75R16 Cooper brand Discoverer S/T MAXX model passenger car replacement tires manufactured between January 23, 2011 and March 26, 2011, at Cooper's plant located in Texarkana, Arkansas.

Cooper explains that the noncompliance is that, due to a mold labeling error, the sidewall marking on the reference side of the tires, required by paragraph S5.5(f), incorrectly describes the actual number of plies in the tread area of the tires. Specifically, the tires in question were inadvertently manufactured with "TREAD 1 PLY NYLON + 2 PLY STEEL + 3 PLY POLYESTER; SIDEWALL 3 PLY POLYESTER." The labeling should have been "TREAD 2 PLY NYLON + 2 PLY STEEL + 3 PLY POLYESTER; SIDEWALL 3 PLY POLYESTER."

Cooper also explains that while the non-compliant tires are mislabeled, the tires do in fact have 2 Nylon tread plies and meet or exceed all other applicable Federal Motor Vehicle Safety Standards.

Cooper reported that this noncompliance was discovered during a review of the specified stamping requirements and visual inspection of tire stamping.

Cooper argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not create an unsafe condition and all other labeling requirements have been met.

[1] Cooper Tire & Rubber Tire Company (Cooper) is a replacement equipment manufacturer incorporated in the state of Delaware.

Cooper points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

In summation, Cooper believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision: The agency agrees with Cooper that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of the vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall.

Therefore, tire dealers and customers should consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls do not contain steel plies, this potential safety concern does not exist.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the 6,964 [2] tires that Cooper no longer controlled at the time that it determined that a noncompliance existed in the subject tires.

In consideration of the foregoing, NHTSA has decided that Cooper has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Cooper's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: February 15, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–4030 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–59–P

[2] Cooper's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Cooper as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the affected tires. However, a decision on this petition cannot relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper notified them that the subject noncompliance existed.

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Research and Innovative Technology Administration (RITA), Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Tuesday, March 6, from 9 a.m. to 4:30 p.m. EST in the Oklahoma City Room at the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC. Section 5601(o) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C. app. 2) to advise the Bureau of Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department.

The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Overview of prior meeting; (3) Discussion of the FY 2013 budget; (4) Update on BTS data programs and future plans; (5) Council Members review and discussion of BTS programs and plans; (6) Public Comments and Closing Remarks. Participation is open to the public. Members of the public who wish to participate must notify Courtney Freiberg at *Courtney.Freiberg@dot.gov*, not later than February 24, 2012. Members of the public may present oral statements at the meeting with the approval of Patricia Hu, Director of the Bureau of Transportation Statistics. Noncommittee members wishing to present oral statements or obtain information should contact Courtney Freiberg via email no later than February 17, 2012.

Questions about the agenda or written comments may be emailed or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, *Attention:* Courtney Freiberg, 1200 New Jersey Avenue SE., Room # E34–429, Washington, DC 20590, *Courtney.Freiberg@dot.gov*, or faxed to (202) 366–3640. BTS requests that written comments be received by February 17, 2012. Access to the DOT Headquarters building is controlled; therefore, all persons who plan to attend the meeting must notify Courtney Freiberg at 202–366–1270 prior to February 27, 2012. Individuals attending the meeting must report to the main DOT entrance on New Jersey Avenue SE. for admission to the building. 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 Courtney Freiberg at 202–366–1270 at least seven calendar days prior to the meeting. Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 10th day of February, 2012.

Deborah Johnson,

Acting Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2012–3849 Filed 2–21–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 714X)]

CSX Transportation, Inc.—Abandonment Exemption—in Vermillion County, IL.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 0.4-mile rail line on its Northern Region, Chicago Division, Woodland Subdivision, between mileposts QSK 3.6 and QSK 4.0 at the end of the track, in Danville, Vermillion County, IL. The line traverses United States Postal Service Zip Code 61832.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 23, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 5, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 13, 2012, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by February 27, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by February 22, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 13, 2012.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. See 49 CFR 1002.2(f)(25).

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–3915 Filed 2–21–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35595]

Wellsboro & Corning Railroad, LLC—Acquisition and Operation Exemption—Wellsboro & Corning Railroad Company

Wellsboro & Corning Railroad, LLC (WCLLC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Wellsboro & Corning Railroad Company and to operate approximately 35.5 miles of rail line between milepost 109.90 at Wellsboro, Pa., and milepost 74.70 at Erwin, NY, in Tioga County, PA, and Steuben County, NY.

WCLLC states that it intends to interchange traffic with Norfolk Southern Railway Company and Canadian Pacific Railway Company.

The transaction is scheduled to be consummated on or after March 7, 2012 (30 days after the notice of exemption was filed).

WCLLC certifies that its projected annual revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than February 29, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35595, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 13, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–3944 Filed 2–21–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35594]

Eric Temple—Control Exemption—Portland Vancouver Junction Railroad, LLC

Eric Temple (applicant), a noncarrier individual, has filed a verified notice of exemption to acquire direct control of Portland Vancouver Junction Railroad, LLC (PVJR), a wholly owned subsidiary of Columbia Basin Railroad Company, Inc. (CBRW), upon his acquiring 100% of the membership interest in PVJR.

The transaction is expected to be consummated on or after March 7, 2012.

Applicant and Nicholas B. Temple directly control CBRW and Central Washington Railroad Company (CWA), and they indirectly control PVJR.[1] CBRW, CWA and PVJR are all Class III rail carriers that lease and operate rail lines between specified points within the State of Washington.[2]

Applicant states that: (1) PVJR does not connect with any rail lines of CBRW or CWA; (2) the transaction is not part of a series of anticipated transactions that would connect these rail lines with each other; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 29, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35594, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Rose-Michele Nardi., Weiner Brodsky Sidman Kider PC, 1300 19th St. NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: February 13, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–3941 Filed 2–21–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 33506]

Western Coal Traffic League—Petition for Declaratory Order

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) instituted a declaratory order proceeding on September 28, 2011, *Western Coal Traffic League—Petition for Declaratory Order*, FD 35506 (STB served Sept. 28, 2011), and will hold a public hearing to explore the effect of the price that Berkshire Hathaway, Inc. (Berkshire) paid to acquire BNSF Railway Company (BNSF) in 2010 on the Board's annual Uniform Rail Costing System (URCS) and revenue adequacy determinations, with respect to BNSF.

DATES: The hearing will begin at 9:30 a.m., on Thursday, March 22, 2012, in the Board's hearing room at the Board's headquarters located at 395 E Street SW., Washington, DC. The hearing will be open for public observation. Anyone wishing to participate at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed 3 pages), no later than Tuesday, March 6, 2012. All witnesses are encouraged to use their hearing time to call attention to the points they believe are particularly important. Witnesses should present a short oral statement of their comments and be prepared to answer questions from the Board.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the "E-FILING" link on the Board's *www.stb.dot.gov* Web site. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. FD 35506, 395 E Street SW., Washington, DC 20423–0001.

Copies of written submissions will be posted to the Board's Web site and will be available for viewing and self-copying in the Board's public docket room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In this proceeding, the Western Coal Traffic League (WCTL), and other parties,[1] argue that the Class I Railroad Annual Report submitted by BNSF to the Board for the year ending December 31, 2010 (2010 R–1), produces a write-up in BNSF's net investment base for URCS costing purposes equal to $8.1 billion[2] and a decrease in BNSF's 2010 annual depreciation calculations by $128 million, both based on the $43 billion that Berkshire paid to acquire BNSF. WCTL also argues that the $8.1 billion write-up increases BNSF's variable costs, and raises the quantitative jurisdictional threshold for rate reasonableness proceedings, thus decreasing the number of shippers that could pursue rate cases before the Board, as well as decreasing the

[1] Applicant states that Nicholas B. Temple and he each have a 50% ownership interest in CBRW and a 45% ownership interest in CWA.

[2] *See Nicholas B. Temple, Eric Temple, Columbia Basin R.R., Cent. Wash. R.R. and Portland Vancouver Junction R.R.—Corporate Family Transaction Exemption,* FD 35210 (STB served Jan. 16, 2009); and *Nicholas B. Temple and Eric Temple—Control Exemption—Cent. Wash. R.R.*, FD 34641 (STB served Jan. 21, 2005).

[1] For convenience, in this decision we will refer to the arguments made by WCTL, and other supporting parties, largely within the context of WCTL's pleadings.

[2] In its opening evidence filed on October 28, 2011, WCTL states that it initially calculated the acquisition premium as $7.625 billion, but based on new information received from BNSF, WCTL has revised this figure to $8.1 billion. *See* WCTL Opening 2 n.1.

maximum rate relief that shippers could be awarded. In addition, WCTL claims that the inclusion of the acquisition premium in the calculation of BNSF's rate of return on its 2010 net investment moves BNSF further away from a Board determination that the carrier is revenue adequate, thus making it less likely for captive shippers to obtain relief in BNSF rate cases. WCTL further argues that the Board's financial accounting rules and Generally Accepted Accounting Principles (GAAP) do not govern regulatory rulemaking, and that the Board is not required to follow GAAP in determining the scope of its regulatory jurisdiction. WCTL therefore suggests that the Board should exercise its authority under 49 U.S.C. 10707(d)(1)(B) to adjust BNSF's URCS costs starting in 2010, by removing the $8.1 billion write-up from BNSF's 2010 R–1, and by making the appropriate corresponding adjustments to annual depreciation.

BNSF counters WCTL's claims by arguing that the Board's precedent on this subject is well-settled, as the Board, the Interstate Commerce Commission (the Board's predecessor agency), the Railroad Accounting Principles Board, and the courts have determined that acquisition cost is an economically accurate measure of current market value. BNSF argues that the issue of the acquisition premium raised by WCTL has been litigated and resolved in favor of GAAP accounting. BNSF further claims that WCTL has presented no evidence or argument that merits revisiting the use of the Berkshire acquisition cost for URCS costing or any other regulatory purpose. *Board Releases and Live Video Streaming Available Via The Internet:* Decisions and notices of the Board, including this notice, are available on the Board's Web site at *www.stb.dot.gov*. This hearing will be available on the Board's Web site by live video streaming. To access the hearing, click on the "Live Video" link under "Information Center" at the left side of the home page beginning at 9 a.m. on March 22, 2012.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing in this proceeding will be held on Thursday, March 22, 2012, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street SW., Washington, DC, as described above.

2. By Tuesday, March 6, 2012, anyone wishing to participate at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested), and a summary of the intended testimony (not to exceed 3 pages).

3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–4049 Filed 2–21–12; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 35 February 22, 2012

Part II

Department of Homeland Security

U.S. Customs and Border Protection

Department of the Treasury

19 CFR Parts 4, 10, 18 et al.
Changes to the In-Bond Process; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 4, 10, 18, 19, 113, 122, 123, 141, 142, 143, 144, 146, 151, and 181

[USCBP–2012–0002]

RIN 1515–AD81

Changes to the In-Bond Process

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the U.S. Customs and Border Protection (CBP) regulations, imported merchandise may be transported in-bond. This process allows imported merchandise to be entered at one U.S. port of entry without appraisement or payment of duties and transported by a bonded carrier to another U.S. port of entry provided all statutory and regulatory conditions are met. At the destination port, the merchandise is officially entered into the commerce of the United States and duties paid, or, the merchandise is exported. CBP is proposing various changes to the in-bond regulations to enhance CBP's ability to regulate and track in-bond merchandise and to ensure that the in-bond merchandise is properly entered and duties are paid or that the in-bond merchandise is exported. Among other things, the proposed changes would: eliminate the paper in-bond application (CBP Form 7512) and require carriers or their agents to electronically file the in-bond application; require additional information on the in-bond application including the six-digit Harmonized Tariff Schedule number, if available, and information relevant to the safety and security of the in-bond merchandise; establish a 30-day maximum time to transport in-bond merchandise between United States ports, for all modes of transportation except pipeline; require carriers to electronically request permission from CBP before diverting the in-bond merchandise from its intended destination port to another port; and require carriers to report the arrival and location of the in-bond merchandise within 24 hours of arrival at the port of destination or port of export. CBP also proposes various other changes, including the restructuring of the in-bond regulations, so that they are more logical and better track the in-bond process. At this time, CBP is not proposing to change the in-bond procedures found in the air commerce regulations, except to change certain times periods to conform to the proposed changes in this document.

DATES: Comments must be received on or before April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Gary Schreffler, Office of Field Operations, (202) 344–1535.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2012–0002.
- *Mail:* Border Security Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, Mint Annex, 799 9th Street NW., Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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Table of Acronyms

ABI Automated Broker Interface
GAO Government Accountability Office
IE Immediate Exportation
IT Immediate Transportation
T&E Transportation and Exportation

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

A. The In-Bond System

Generally, when a shipment of merchandise reaches the United States, the merchandise in the shipment may be entered for consumption, entered for warehouse, admitted into a foreign trade zone or entered for transportation in-bond to another port. The focus of this proposed rule is on merchandise that is entered for transportation in-bond. Transportation of merchandise in-bond is the movement of imported merchandise, secured by a bond, from one port to another prior to the appraisement of the merchandise and prior to the payment of duties. The transportation of merchandise in-bond is frequently referred to as an in-bond movement or shipment.

Currently, in-bond merchandise may be transported through the United States without appraisement or the payment of duties, provided the carrier or other appropriate party obtains a bond and files a transportation entry on a CBP

Form 7512. When the in-bond merchandise reaches its destination, it must be entered for consumption, entered for warehouse, or exported. The bond requires the bonded carrier to comply with all laws and regulations governing the receipt, safekeeping, and disposition of bonded merchandise. The transportation entry accounts for the movement of the merchandise during the in-bond process.

The in-bond system is widely used. According to a 2007 Report from the U.S. Government Accountability Office (GAO),[1] in-bond shipments represent 30 to 60 percent of all imports that move through U.S. ports. This in-bond system provides flexibility to importers and facilitates the flow of trade and commerce by allowing importers and other interested parties to choose when and where to enter imported merchandise into the commerce of the United States or when and where to warehouse or export the merchandise. This enables the importer to delay payment of applicable duties for imported merchandise. The in-bond system also allows merchandise to be transported and exported without the payment of duties and without having to meet all of the entry requirements necessary to enter the goods into the commerce of the United States.

B. Legal Authority

Subject to specified exceptions, 19 U.S.C. 1484 requires the "importer of record" to use reasonable care to make entry by filing appropriate entry documentation to enable CBP to determine whether such cargo may be released from CBP's custody and to declare the value and classification and other relevant information to enable CBP to properly assess duties on the merchandise, collect accurate statistics, and determine whether any other applicable requirements of law are met.

Two of the specified exceptions in 19 U.S.C. 1484 concern merchandise entered for immediate transportation to another port (19 U.S.C. 1552) and merchandise entered for transportation and exportation (19 U.S.C. 1553). Pursuant to these sections, merchandise may be entered at a U.S. port of entry without appraisement or the payment of duties, for transportation to another port for entry into U.S. commerce or for exportation, provided that all statutory and regulatory conditions are met. Specifically, merchandise may be entered without the payment of duties if the merchandise is transported by a bonded carrier to another U.S. port (the port of destination or the port of export). Upon arrival at the port of destination or export, several options are available regarding the in-bond merchandise. The merchandise may be, among other things, entered for consumption, entered for further transportation by a bonded carrier to another port, or exported to a foreign port. In addition, pursuant to 19 U.S.C. 1551a, bonded cartmen and lightermen are allowed to transport in-bond merchandise between certain specified ports.

Pursuant to 19 U.S.C. 1623 and 1624, the Secretary of the Treasury is authorized, by regulation or specific instruction, to require bonds as necessary for the protection of the revenue or to ensure compliance with applicable laws and regulations. Following the enactment of the Homeland Security Act of 2002 (107 Pub. L. 296, 116 Stat. 2135), on May 15, 2003, the Secretary of the Treasury delegated certain powers to perform customs revenue functions to the Secretary of Homeland Security. *See* Treasury Department Order 100–16.

The applicable regulations regarding the in-bond system issued under the above authorities are set forth in title 19 of the Code of Federal Regulations (19 CFR), Parts 18, 122, and 123. Part 18 covers "Transportation in bond and merchandise in transit;" part 122 covers "Air Commerce regulations;" and part 123 covers "Customs relations with Canada and Mexico."

C. Types of In-Bond Entries

The CBP regulations provide for several types of in-bond entries. The most commonly used in-bond entries are: Immediate Transportation (IT), Transportation and Exportation (T&E), and Immediate Exportation (IE). An IT entry allows merchandise, upon its arrival at a U.S. port, to be transported to another U.S. port, where a subsequent entry must be filed. *See* 19 U.S.C. 1552 and 19 CFR 18.11. A T&E entry allows merchandise to be entered at a U.S. port for transit through the United States to another U. S. port, where the merchandise is exported without the payment of duties. *See* 19 U.S.C. 1553 and 19 CFR 18.20. An IE entry allows cargo that has arrived at a U.S. port to be immediately exported from that same port without the payment of duties. *See* 19 CFR 18.7 and 18.25.

D. The 2007 GAO Report on the In-Bond System

This Notice of Proposed Rulemaking (NPRM) addresses certain weaknesses in the in-bond system identified by the Government Accountability Office (GAO) in a report to Congress dated April 2007 (GAO Report).[2] The GAO concluded that CBP does not adequately monitor and track in-bond goods; in particular, CBP does not consistently reconcile the in-bond document issued at the port of first arrival with documents at the port of destination or port of export. The GAO found that this diminishes CBP's ability to ensure that the cargo is either officially entered, with appropriate duties or quotas applied, or is in fact exported.[3]

The GAO observed that the in-bond regulations provide unusual flexibility for the trade community. For example, the GAO noted that the regulations currently allow carriers from 15 to 60 days, depending on the mode of shipment, to reach their final destination and allow carriers to change a shipment's final destination without notifying CBP. The GAO also concluded that the in-bond system collects inadequate information about the in-bond merchandise, thus undermining CBP's efforts to manage associated security risks and ensure proper targeting of inspections.[4] The GAO identified the in-bond regulations as a major contributing factor to these weaknesses of the in-bond system, and stated that both CBP's infrastructure and regulations had not kept pace with the dramatic increase in trade.[5]

In response to the GAO report, CBP conducted an internal audit, formed a working group comprised of CBP in-bond experts, and worked closely with the trade community to identify solutions to the in-bond system's regulatory weaknesses. This NPRM reflects those deliberations and addresses the GAO's concerns by proposing various amendments to the in-bond regulations. The specific changes to the regulations are discussed in Section III. In conjunction with the proposed regulatory changes, CBP is also in the process of expanding and modernizing the capabilities of its centralized commercial trade processing system, the Automated Commercial Environment (ACE). This expansion and modernization of ACE will facilitate the implementation of the proposed regulatory changes. To eliminate errors in reporting overdue in-bond

[1] U.S. Government Accountability Office, Report to the Committee on Finance, U.S. Senate, International Trade: Persistent Weaknesses in the In-Bond Cargo System Impede Customs and Border Protection's Ability to Address Revenue, Trade, and Security Concerns, GAO–07–0561 (Washington, DC April 17, 2007).

[2] *Id.*

[3] *Id.* at 3.

[4] *Id.*

[5] *Id.*

movements, CBP is modifying an existing in-bond module in ACE. In addition to these long and short term systemic changes, CBP is implementing changes in policy and oversight of the in-bond process to ensure that the trade community complies with the in-bond requirements and to improve the tracking of in-bond merchandise.

III. Proposed Amendments to the In-Bond Regulations

This document proposes to revise and modernize part 18 and some other parts of the regulations to change the in-bond process from a paper dependent entry process to an automated paperless process. In addition to modernizing the regulations to meet the realities of today's real time shipping environment, the proposed amendments are designed to provide CBP with the necessary tools to better track in-bond merchandise, which is vital to security and enforcing trade compliance. Among the various changes, CBP is proposing the following five major changes to the in-bond process: (1) Except for merchandise transported by pipeline, eliminate the paper in-bond application (CBP Form 7512) and require carriers or their agents to electronically file the in-bond application, (2) require additional information on the in-bond application including the six-digit Harmonized Tariff Schedule number, if available, and information relevant to the safety and security of the in-bond merchandise, (3) establish a 30-day maximum transit time to transport in-bond merchandise between United States ports, for all modes of transportation except pipeline, (4) require carriers to electronically request permission from CBP before diverting the in-bond merchandise from its intended destination port to another port, and (5) require carriers to report the arrival and location of the in-bond merchandise within 24 hours of arrival at the port of destination or port of export. At this time, CBP is not proposing to change the in-bond procedures found in the air commerce regulations at 19 CFR part 122, subparts J and L, except to change the specified maximum transit and export times to conform to the proposed changes in Part 18. Any other proposed changes to those subparts will be done in a separate rulemaking.

A. Elimination of CBP Form 7512

For merchandise to be transported in-bond, currently the carrier or designated person must obtain a bond and submit an entry document to the appropriate CBP official. *See* 19 CFR 18.2(b). This form is known as CBP Form 7512, or "Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit." The bonded carrier is responsible for initiating the in-bond shipment, describing the merchandise on the manifest, including the quantity to be delivered for transportation in-bond, and ensuring that the cargo is delivered to either the port of destination or the port of export within the prescribed periods, as detailed below.

Paper filing raises security issues because it impedes CBP's ability to consider relevant data about the in-bond merchandise and the in-bond movements on a real-time basis. After the CBP Form 7512 is submitted, a CBP officer must manually input the data into the computer system and then manually close the in-bond transaction records once the in-bond merchandise is entered or exported, a time consuming and costly process. In addition, the lack of information about in-bond movements on a real-time basis makes it difficult for CBP to adequately track what merchandise is moving in-bond, where the goods are, or whether any illegal diversions have occurred. The GAO found, and CBP agrees, that due to the large volume of records and CBP's limited resources, the use of the paper form impedes risk management. In addition, the current paper-based system makes it difficult to target and detect violators, thereby impeding CBP's ability to hold carriers accountable when they fail to adhere to the in-bond requirements. Although some in-bond applications are currently transmitted electronically through the Automated Commercial System (ACS), electronic filing is not mandatory.

To address these issues, CBP proposes to generally require carriers and other authorized persons to submit in-bond applications electronically using a CBP-approved electronic data interchange (EDI) system.[6] Electronic filing of the in-bond application will facilitate automated screening of in-bond cargo and is necessary to increase security and to maximize CBP's use of limited resources. Electronic filing will also allow CBP to better utilize its enforcement resources to identify and penalize those in-bond filers who fail to adhere to the in-bond requirements. Accordingly, CBP proposes to amend 19 CFR part 18 to require the carriers or one of the parties named in the newly created 19 CFR 18.1(c) to electronically submit the in-bond application to CBP via a CBP-approved EDI system.

ACS will not be able to support all the functionality required to implement the proposed new requirements for in-bond filers described in detail below, such as the requirements for in-bond filers to provide additional data and information on the in-bond application, to update the in-bond record, to submit and update all diversion requests and CBP's approval of the diversion requests, and to provide the location of the merchandise when reporting arrivals. Therefore, CBP intends to designate ACE as the CBP-approved EDI system for submitting the in-bond application and other information that is required to be submitted under this proposal via a CBP-approved EDI system.[7]

B. New Information Requirements for In-Bond Shipments

The current regulations generally require only limited information on the in-bond document (CBP Form 7512). In most cases, only a description and quantity of the merchandise are required. *See* 19 CFR 18.2(b). The exception to the general requirement is merchandise entered under an IT entry. The description for IT merchandise must be sufficiently detailed to enable CBP to estimate the duties and taxes that will be owed on the merchandise. *See* 19 CFR 18.11(h). If IT merchandise is subject to detention or supervision of a federal agency, then the description must be sufficient to enable the agency concerned to determine the contents of the shipment. *See* 19 CFR 18.11(e). Additionally, certain textile shipments being transported under an IT bond must be sufficiently described to allow CBP to estimate taxes and duties. *Id.*

The GAO found that the information that CBP collects on the CBP Form 7512 often lacks sufficient details pertaining to the imported merchandise. GAO noted that importers and shipping agents typically provide imprecise and vague descriptions of the cargo based on the information provided for insurance purposes. The GAO found that this diminishes CBP's ability to assess risks and monitor trade volume and value, and hampers CBP's ability to effectively target trade and revenue violations.

CBP agrees with GAO's observations and concerns. CBP is also of the view that the more detailed information on the in-bond application will enable CBP to better ascertain whether the merchandise to be transported in-bond presents any health, safety, or

[6] Due to the unique circumstances related to pipeline shipments, in-bond applications for these shipments are not subject to electronic filing.

[7] Electronic in-bond requests which are filed via ABI (ABI QP) will be supported in ACE. ABI QP is an electronic in-bond request filed via ABI.

conservation issues that need to be addressed. With the additional and more detailed information described below, CBP will be able to provide immediate feedback to carriers on whether their cargo will require additional inspection and screening and enable CBP to enforce other agencies' cargo restrictions on a real-time basis. The proposed requirements, reflected in the proposed amendments to 19 CFR 18.1(d), are listed below.

Description of the merchandise. Under the proposed rule the carrier or other responsible party will be required to provide the six-digit Harmonized Tariff Schedule (HTS) number of the merchandise if it is available. (CBP will also accept the eight or ten-digit HTS number). If the HTS number is not available, then the carrier or other responsible party must provide a detailed description providing the exact nature of the merchandise in sufficient detail to allow CBP and/or another government agency to determine if the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation. In either case, if the carrier or other responsible party knows that the merchandise to be transported in-bond is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation enforced by CBP or another government agency, the carrier or other responsible party must provide a statement to this effect on the in-bond application. The statement must include the rule, regulation, law, standard or ban to which the merchandise is subject, and the name of the government agency responsible for enforcing it.

Prohibited or restricted merchandise. The carrier or other responsible party must identify merchandise that is prohibited or subject to restricted importation in the U.S.

Other identifying information. The carrier or other responsible party must provide the visa, permit, license or other similar number or identifying information related to the merchandise if such visa, permit, license or other similar information has been issued by the U.S. Government, a foreign government or some other issuing authority.

Container and seal number. The carrier or other responsible party must provide the container number in which the merchandise is to be transported in-bond and the seal number of the container.

This new information combined with the HTS number or the enhanced description, in the event the HTS number is not available, will enable CBP to better monitor the movement and required disposition of in-bond merchandise. It will also enable CBP to accurately and timely identify other agencies' jurisdiction over the admissibility of the in-bond merchandise.

These new requirements are reflected in the proposed amendment to the regulations under 19 CFR 18.1(d), except for the container/conveyance seal requirement, which is reflected in section 18.4.

C. 30-Day Transit Times Between Ports

Under the current regulations, the time period to transport in-bond merchandise from the origination port to the destination port, or to the port of export, varies depending on the mode of transit. Currently, in-bond merchandise transported by truck must be delivered within 30 days. *See* 19 CFR 18.2(c)(2). In-bond merchandise arriving by air transit and traveling to a final port of destination in the U.S. by air must be delivered to the destination port within 15 days of arrival at the origination port. *See* 19 CFR 122.119(b). In-bond merchandise that is transported by air to another port for exportation, must be exported within 15 days from the date that it was received by the forwarding airline. *See* 19 CFR 122.120(c). Sea vessels must deliver their in-bond shipments within 60 days from the date that the forwarding carrier takes receipt of the merchandise. *See* 19 CFR 18.2(c)(2). Failure to deliver the merchandise within the prescribed time periods constitutes an irregular delivery and subjects the bonded carrier to liquidated damages claims.

CBP believes that having different time frames for each mode of transportation is confusing and burdensome to both CBP and the trade community. This is due to the fact that cargo is often transported through the in-bond system by more than one mode of transportation. In some cases, in-bond cargo is moved by air, sea, and truck. The set of varied time frames is confusing in this multi-modal environment and creates uncertainty as to which time frame applies. As a result, the required time frames are difficult to enforce. Moreover, the lengthy 60-day time period for sea vessels is not appropriate in today's environment where the supply chain relies on rapid deliveries. During this period, the in-bond shipments are often unaccounted for, and transactions are open for too long a period of time, hindering CBP's enforcement and targeting efforts. Therefore, CBP proposes to harmonize the time limits across all modes of transportation, except for pipeline shipments, which will continue to have no time limit.

After consultations with members of the trade community and observing transportation patterns, CBP has concluded that the 30-day time limit now applicable to truck shipments is a reasonable time period that can be applied for all modes of transportation (except pipeline shipments) and that this time period addresses CBP's security concerns. Therefore, this document proposes to amend 19 CFR to harmonize the maximum time limits across all modes of transportation to 30 days. Under the proposal, subject to certain exceptions, the merchandise must be delivered to CBP at the port of destination or export within 30 days from the date CBP authorizes the in-bond movement. This is a change from the current regulations that measure the time frame for delivery from the date the merchandise was delivered to the forwarding carrier. This change will provide transparency and facilitate compliance. This uniform 30-day standard will enable CBP to better track in-bond shipments and will often enable CBP to ascertain at an earlier time point whether a shipment has been improperly diverted.

D. Diversion of In-Bond Cargo

Under the current regulations, in-bond merchandise that is in transit or that has reached the destination port or port of export may be diverted to a new destination port or port of export. With some exceptions, prior application and CBP approval of the diversion is not required. *See* 19 CFR 18.5(a).

The current diversion procedures make it virtually impossible for CBP to identify the ultimate destination of a diverted shipment and to determine whether the merchandise reaches that destination. This presents a security risk, a risk of circumvention of other agencies' admissibility requirements, and a risk that proper duties are not collected. In its report, the GAO noted several instances where in-bond merchandise was diverted without the payment of duties. For example, the GAO reported that "the United States experienced an estimated $100 million loss in trade revenue due to more than 7,500 in-bond shipments of apparel that were diverted from Los Angeles to U.S. commerce, from September 1999 through September 2002." [8] The GAO also observed that the current regulations undermine CBP's efforts to track in-bond shipments and ensure their proper disposition. The GAO noted that the current regulations allow

[8] GAO report p. 1.

an importer or carrier to open an in-bond transaction to transport its cargo to one U.S. port, and then initiate an additional in-bond transaction to transport the same cargo to another U.S. port.[9] As a result, the importer or carrier gains additional time to transport the cargo and the associated original in-bond transaction remains open after the cargo reaches its final destination. As the GAO noted, "an open in-bond record indicates risk that cargo could have been diverted into U.S. commerce without paying applicable duties or in violation of trade regulations or quotas." [10] GAO noted that CBP's in-bond regulations that were intended to provide flexibility to business result in it being more difficult to track in-bond transactions.[11]

CBP agrees that tighter control of cargo transiting between ports, including in-bond merchandise that will be diverted to a different port, is critical to security and is necessary to ensure the proper collection of duties, and to protect the health and safety of consumers.

To address these issues, CBP proposes to amend section 18.5 to require in-bond carriers and other applicable parties to electronically request permission from CBP prior to diverting the imported merchandise to another port. CBP will run the diversion request through its systems to verify other agency requirements and to assess risk. The requestor will receive an electronic response from CBP either authorizing the diversion or, if it is not authorized, indicating the reason for the denial of the diversion request.

CBP also proposes to amend sections 18.2 and 18.5 to close a loophole regarding in-transit times. Under the current regulations, the filing of a new transportation entry has the effect of allowing the carrier additional time to transport the cargo. Under the proposed amendments, neither diversion to another port nor the filing of a new in-bond application extends the transit time. In either case, the movement of diverted merchandise must be completed within the original 30 day period.

E. Report of Arrival

The current regulations require the carrier to report to CBP the arrival of any portion of the in-bond shipment promptly, but no more than two working days after the arrival of the merchandise at the port of destination or the port of export. The carrier generally must manually surrender the in-bond document, CBP Form 7512, to the port director, as notice of arrival of the merchandise. *See* 19 CFR 18.2(d).

To allow for better tracking, CBP proposes to amend sections 18.2, 18.7 and 18.20 to require the delivering carrier to report the arrival of each in-bond shipment within 24 hours of the arrival of the merchandise at the port of destination or the port of export and to require the delivering carrier to transmit the notice of arrival electronically via a CBP-approved EDI system.

CBP is also proposing to amend the regulations at 19 CFR 18.1 by adding paragraph (j) to require the carrier, at time of arrival at the port of destination or the port of export, to electronically provide CBP with the physical location of the in-bond merchandise within the port. This will enable CBP to better monitor cargo in a high volume environment, and thus, to better enforce the in-bond requirements.

To ensure that bond principals and sureties are sufficiently informed of the bond conditions and limitations arising out of the above noted proposed change, CBP proposes to amend 19 CFR 113.63, paragraph (c)(1) to provide that the arrival of the merchandise must be reported within 24 hours after the arrival of the merchandise.

F. Change to the Immediate Exportation (IE) Rules

Entry for Immediate Exportation (IE) is often used when merchandise is unloaded from one conveyance and loaded onto a different conveyance for direct exportation from the U.S. CBP is proposing to amend section 18.25 to require that shipments arriving at a United States port by truck, for which an immediate exportation entry is presented as the sole means of entry, will be denied a permit to proceed and the truck may be turned back to the country from which it came or, at the discretion of the port director, the truck may be allowed to file a new entry. CBP is proposing this change due to the heavy volume of truck shipments arriving in the U.S. from a foreign destination that are entered as for immediate exportation and then promptly exported back to the country from where the shipment originated. This practice has led to a serious problem with congestion at certain ports and has monopolized CBP's limited targeting and enforcement resources at the most congested ports. In some cases, these IE entries were utilized to engage in fraudulent activities and to circumvent international trade laws. This proposed change conforms the regulations to current CBP policy prohibiting this practice.

G. Sealing of Conveyances and Report of Seal Number to CBP

This document proposes to amend section 18.4 to clarify the rules concerning sealing of conveyances by removing the underutilized and obsolete seal options that are no longer commercially necessary or operationally feasible and adding new requirements.

Specifically, CBP proposes to amend 19 CFR 18.4 to: (1) Require the carrier or other authorized party to seal the containers and/or conveyance with seals pursuant to 19 CFR 24.13 and 24.13a and to ensure that the seals remain intact until the cargo arrives at the port of destination or port of export; (2) require the carrier or other authorized party to transmit the container/conveyance seal numbers to CBP as part of the in-bond application pursuant to section 18.1(d); (3) provide for the assessment of liquidated damages against the carrier or other authorized party for any unauthorized removal of the seals; and (4) specify that only CBP may waive the seal requirement.

H. Changes Necessitated by the Proposal To Require Electronic Filing

CBP is proposing to update or remove certain provisions in 19 CFR that will no longer be relevant when electronic filing is required.

For example, CBP proposes to delete paragraph 19 CFR 18.1(a)(1) from the regulations. This paragraph generally requires carriers to take receipt of the merchandise within 5 working days after presentation of an entry. For in-bond entries filed by paper, this time limit permits CBP officers to more easily verify the receipt of the merchandise by the carrier. Electronic filing will render this provision obsolete.

CBP also proposes to delete paragraphs 19 CFR 18.2(a)(2), (3), and (4), each of which generally requires a CBP officer to supervise the lading of merchandise delivered to a bonded carrier. Paragraph 18.2(a)(2) applies to merchandise delivered to a bonded carrier for transportation in-bond; paragraph 18.2(a)(3) pertains to merchandise delivered from a warehouse to a bonded carrier; and paragraph (a)(4) pertains to merchandise from a Foreign Trade Zone (FTZ) to a bonded carrier. CBP officers no longer physically supervise each lading. CBP has centralized its operations to reflect the great increase in trade volume that has transpired since these regulations were last amended. Under current policy, should a CBP officer wish to examine merchandise, a hold is placed

[9] GAO report p. 23.
[10] GAO report p. 21.
[11] GAO report p. 21–22.

on the merchandise so that the shipment and its contents can be reviewed.

CBP also proposes to amend the regulations pertaining to splitting up a shipment for exportation. Under the current regulations, the splitting up of a shipment for exportation is permitted in specified instances: When exportation of a shipment in its entirety is not possible by reason of the different destinations to which portions of the shipment are destined; when the exporting vessel cannot properly accommodate the entire quantity; or in other similar circumstances. The regulations impose no time limits for the exportation of split shipments. The lack of a time limit combined with paper filing of the in-bond application make it virtually impossible for CBP to properly oversee the export of split shipments and to know whether split shipments are properly exported. To address this issue, CBP proposes to amend 19 CFR 18.24(b), to require that all split shipments must be initiated within two days of the date that the split shipment is authorized. The electronic filing of the in-bond application will also help CBP track split shipments.

I. Miscellaneous Changes to Parts 18 and 19

CBP proposes to add a new section 18.0 that will describe the scope of part 18 and define terms that are regularly used in part 18. The defined terms are: Common carrier, Origination port, Port of destination, Port of diversion, and Port of export.

CBP also proposes several amendments to part 18 to ensure that the regulations are consistent with other existing provisions or current CBP policy, to address security concerns, and for clarification purposes.

For example, there is an inconsistency in the regulations regarding what kinds of transportation entries may be used to transport explosives. Although current section 18.11(a) generally prohibits the movement of explosives via an IT entry, section 18.21(d) allows for the movement of explosives via an IT entry provided the importer has first obtained a license or permit from the proper government agency.[12] CBP is proposing to delete the prohibition of explosives via an IT entry from section 18.11(a) and to add a new provision (section 18.1(l)(2)(iv)) that allows for the movement of explosives via IT, T&E, and IE entries, provided the importer has first obtained the appropriate license or permit from the proper government agency. Because the new provision will duplicate current section 18.21(d), CBP proposes to delete that paragraph.

CBP is also proposing to move paragraph 19 CFR 18.5(g), currently in the section on diversions, to its own section 19 CFR 18.46. This provision was added to the regulations as part of the Importer Security Filing and Additional Carrier Requirements rulemaking, commonly known as 10+2. That rule was published in the **Federal Register** as an interim final rule on November 25, 2008. (*See* 73 FR 71780). Pursuant to the 10+2 rulemaking, importers and carriers are required to provide CBP with certain data elements via an importer security filing (ISF) before cargo is brought into the United States by vessel. The required information is necessary to improve CBP's ability to identify high-risk shipments. The effective date of the rule was January 26, 2009.

Current paragraph 18.5(g) addresses the procedures to be followed when merchandise which, at the time of the transmission of the ISF, was intended to be entered as an immediate exportation (IE) or transportation and exportation (T&E), is entered instead as a consumption entry. It also addresses the procedures for the diversion of the in-bond merchandise. Under the regulation, if the in-bond movement will be diverted to a port other than the port of destination or export, or the IE or T&E is changed to a consumption entry, permission is needed from the port director at the port of origin which may only be granted upon receipt by CBP of a complete ISF filing.[13] CBP has received feedback from the trade community that the placement of this provision in the in-bond diversion section is confusing because its scope exceeds diversion situations. CBP agrees and is proposing to move this provision to new section 18.46, entitled: Changes to Importer Security Filing Information. Additionally, CBP is proposing to delete the language requiring permission of the port director at the port of origin to divert merchandise to a new port, as this requirement will now be included in section 18.5.

CBP is proposing to amend 19 CFR 18.7, 18.12, 18.20, 18.25, and 18.26 to clarify the time limit for exporting or entering in-bond merchandise that has arrived at the port of destination or port of export. This will make it easier for CBP to verify that the in-bond merchandise was in fact either exported or entered. Specifically, CBP is proposing that in-bond merchandise that has arrived at the port of export or destination port must be exported, entered for consumption, or entered under another form of entry, no more than 15 days after the report of the arrival of the merchandise was submitted to CBP. Failure to enter or export the merchandise will result in the merchandise being subject to general order requirements under 19 CFR 4.37, 122.50, and 123.10, as applicable, and the assessment of liquidated damages as appropriate. In accordance with these changes section 18.12(a) is being amended to remove the provision requiring merchandise that has not been entered or exported within six months to be entered for consumption.

CBP is proposing to amend sections 18.7, 18.20, 18.25 and 18.26 to require the bonded carrier to update the in-bond record to reflect that merchandise has been exported and to specify that the port director may require evidence of exportation in accordance with the requirements of 113.55.

CBP is also proposing to remove the clause and legend in paragraph (f) of section 19.15 relating to flour exports to Cuba because the original basis for the provision, to facilitate compliance with the Cuban Reciprocity Treaty of 1902, is no longer applicable due to the termination of the treaty on August 21, 1963.

J. Non-Substantive Changes

This document also proposes non-substantive amendments to 19 CFR to reflect the nomenclature changes made necessary by the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) and DHS's subsequent renaming of the agency as U.S. Customs and Border Protection (CBP) on March 31, 2007. *See* 72 FR 20131, dated April 23, 2007. As a consequence of these changes, this document proposes to update the regulations at 19 CFR part 18 to refer to the agency as CBP. Additionally, this document proposes to restructure the in-bond regulations contained in part 18 so that they are more logical and more consistently track the in-bond process. This document further proposes to amend part 18, so that all the in-bond entry types have the same requirements, when applicable. Finally, in an effort to make the regulations more user friendly and to make it easier to locate relevant

[12] By **Federal Register** notice published April 5, 1984 (49 FR 13491), 19 CFR 18.21(d) was amended to permit the entry for transportation and/or exportation under a transportation and exportation, or an immediate transportation entry if the importer first obtains a license or permit from the proper governmental agency.

[13] Under 19 CFR part 149, shipments intended to be transported in-bond as an immediate exportation or transportation and exportation are subject to ISF requirements different than those applicable to shipments intended to be entered for consumption.

provisions, each paragraph has been given a title.

K. List of Proposed Changes

Section 4.82 is amended by removing the reference to the manifest and Customs Form 7512 and replacing those terms with a reference to part 18.

Section 10.60 is amended by replacing the requirement to file a Customs Form 7512 with the requirement to file an in-bond application pursuant to part 18 of this chapter.

Section 12.5 is amended by removing the reference to the Customs carrier's manifest and Customs Form 7512 and requiring that the shipment be processed pursuant to part 18.

Section 12.11 is amended by removing the reference to the Customs Form 7512, in-bond seals, and customs seals, and replacing those terms with a reference to part 18.

Section 18.0 is created to provide the scope of part 18 and to define terms that are commonly used in the in-bond environment. The scope includes the requirements and procedures pertaining to the transportation of merchandise in-bond except as provided in parts 122 (air commerce regulations) and 123 (CBP relations with Canada and Mexico). The defined terms are: Common carrier, Origination port, Port of destination, Port of diversion, and Port of export. This is a new provision.

Section 18.1 is revised to provide the general requirements for filing in-bond entries that are currently set forth in 18.2. The current section 18.1 is redesignated as section 18.2. The new section 18.1 contains the following provisions:

- Paragraph (a) is new and mandates the filing of an in-bond entry in order to transport merchandise in-bond.
- Paragraph (b) lists the types of transportation entries and withdrawals and is derived from current section 18.10(a).
- Paragraph (c) states who can file an in-bond application and is derived from current section 18.11(b).
- Paragraph (d) requires the submission of an in-bond application via a CBP-approved EDI system for in-bond entry types and is derived from the current section 18.2(b).
  - Paragraph (d)(1) lists what information must be contained in the in-bond application.
    - Paragraph (d)(1)(i) requires the description of the merchandise, consisting of the six-digit tariff number, if available. CBP will also accept the eight or ten-digit HTS number. If the six digit HTS number is not available, then a detailed description that includes the exact nature of the merchandise with sufficient detail to allow CBP and other government agencies to determine if the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation, must be provided.
    - Paragraph (d)(1)(ii) requires that if the carrier or other responsible party submitting the in-bond application knows that the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation enforced by CBP or another government agency, a statement providing the rule, regulation, law, standard or ban to which the merchandise is subject to and the name of the government agency responsible for enforcing the rule, regulation, law, standard or ban, must be provided.
    - Paragraph (d)(1)(iii) requires that merchandise that is prohibited or subject to restricted importation in the U.S. must be identified accordingly.
    - Paragraph (d)(1)(iv) requires that certain textile articles be described in sufficient detail to allow CBP to estimate duties and taxes. This provision is derived and moved from current section 18.11(e).
    - Paragraph (d)(1)(v) requires that the description contain other identifying information such as a visa, permit, license, entry number, or other number, that has been issued by the U.S. government, foreign government or other issuing authority. This is a new requirement.
    - Paragraph (d)(1)(vi) requires that the quantity of the merchandise, to the smallest piece count, be provided. This is derived from current section 18.2(b).
    - Paragraph (d)(1)(vii) requires that the container and/or seal number be provided. This is a new requirement.
    - Paragraph (d)(1)(viii) requires that the ultimate destination, either in the U.S. or abroad, be provided. This is a new requirement.
  - Paragraph (d)(2) requires that the in-bond application be electronically transmitted to CBP via a CBP-approved EDI system and also requires that an in-bond application be filed for each conveyance transporting the shipment. This provision eliminates the option of filing a CBP Form 7512.
  - Paragraph (d)(3) requires that all in-bond applications be submitted before the merchandise departs the origination port named in the in-bond application. This is a new provision.
  - Paragraph (d)(4) provides that the initial bonded carrier, by filing the in-bond application, asserts that there is no discrepancy between the quantity of goods received from the importing carrier and the quantity of goods delivered to the initial bonded carrier. This provision is derived from the current section 18.2(b).
- Paragraph (e) requires a custodial bond on a CBP Form 301, containing the bond conditions set forth in 19 CFR 113.63, to transport merchandise in-bond. Currently, this requirement is included only in the section on direct exportation (section 18.25(b)). This new paragraph (e) applies to all types of in-bond entries.
- Paragraph (f) requires CBP authorization before merchandise can be transported in-bond and provides that movement authorization will be transmitted via a CBP-approved EDI system. This is a new provision.
- Paragraph (g)(1) provides CBP discretion to supervise the lading of merchandise delivered to a bonded carrier. This provision is derived from the current section 18.2(a)(2) and eliminates the requirement that CBP supervise the lading of in-bond merchandise, except in certain circumstances, and gives CBP the authority to exercise its supervision authority as necessary.
- Paragraph (g)(2) requires that the quantity of goods transported in-bond from a CBP bonded warehouse will be accounted for pursuant to 19 CFR 19.6. This requirement is contained in the current section 18.2(a)(3).
- Paragraph (g)(3) requires merchandise being delivered from a foreign trade zone to a bonded carrier for transportation in-bond to be supervised in accordance with the procedure set forth in section 146.71(a) of this chapter.
- Paragraph (h) provides that the in-bond filer or any party provided for in paragraph (c), with the permission of the in-bond filer, may update or amend the in-bond record using a CBP-approved EDI system. This is a new provision.
- Paragraph (i) provides the time frame for the transportation of merchandise being transported in-bond.
  - Paragraph (i)(1) requires merchandise being transported in-bond to be delivered to CBP at the port of destination or export within 30 days from the date CBP provides movement authorization to the in-bond applicant. This 30-day requirement is applicable to all in-bond movements, except pipeline movements. Under this provision, neither the diversion to another port nor the filing of a new in-bond application will extend the in-transit time. This requirement is derived from current section 18.2(c)(2). See discussion in III.C. above for a more detailed explanation.

○ Paragraph (i)(2) provides for an extension of the 30-day requirement in cases where it is anticipated that a shipment will not be capable of completing its transit within 30 days. It also provides that CBP may extend the in-transit period if delays are caused due to the examination or inspection of the merchandise by CBP or another government agency or for some other reason.

○ Paragraph (i)(3) provides that CBP or any other government agency with jurisdiction over the merchandise may shorten the in-transit time to less than 30 days and that notice of the shortened in-transit time will be provided with the movement authorization transmitted by CBP.

• Paragraph (j) mandates the delivering carrier to report, via a CBP-approved EDI system, the arrival of any portion of an in-bond shipment within 24 hours of arrival at the port of destination or port of export and subjects the carrier to liquidated damages and other applicable claims for failure to do so. It also requires the delivering carrier to notify CBP of the physical location of the merchandise within the port. This provision is derived from current section 18.2(d), but the 24-hour time period and the requirement to report the location of the merchandise is new.

• Paragraph (k) specifies that in-bond merchandise that has arrived at the port of destination or the port of export must be entered or exported within 15 calendar days from the date of arrival at the port of destination or port of export. On the 16th day it will become subject to general order requirements. This is a new provision.

• Paragraph (l) provides the requirements for processing merchandise that is regulated for purposes of health, safety and conservation, and merchandise that is restricted and prohibited, including narcotics and non-narcotics, explosives, and other prohibited articles. This paragraph is mostly comprised of provisions currently contained in part 18. This provision is applicable to all types of in-bond shipments.

○ Paragraph (l)(1) is a new provision that applies to all merchandise that is regulated for purposes of health, safety or conservation. It allows for the release of merchandise not in compliance with an applicable rule, regulation, law, standard, or ban relating to health, safety, or conservation, for transportation or exportation only upon the authorization of the government agency administering the rule, regulation, law, standard or ban, applicable to the merchandise.

○ Paragraph (l)(2)(i) is derived from the current section 18.21(a).

○ Paragraph (l)(2)(ii) is derived from current section 18.21(b).

○ Paragraph (l)(2)(iii) is derived from current section 18.21(c).

○ Paragraph (l)(2)(iv) is derived from current section 18.21(d) and allows for explosives to be entered for immediate transportation, for transportation and exportation, or for immediate exportation, as specified by the approving government agency. The in-bond entry of explosives is permissible pursuant to Treasury Decision 84–77. *See* 49 FR 13490, April 5, 1984.

○ Paragraph (l)(2)(v) is derived from current section 18.11(d).

Section 18.2 provides the bonding requirements for carriers, cartmen and lightermen. These provisions are currently located in section 18.1. The definition of "common carrier" that is currently located in paragraph (a) is removed and placed in the new section 18.0. Section 18.2(b) is amended to specifically name the ports between which merchandise can be transported in-bond by cartmen and lightermen.

Section 18.3 provides the procedures for the transshipment of merchandise from one conveyance to another conveyance, and for carriers to notify CBP of the transshipment using a CBP-approved EDI system. Additionally, paragraph (d) provides notification requirements for the transshipment of merchandise in emergency situations and the notification requirements concerning the breaking of seals. This provision is derived from the current section 18.3.

Section 18.4 provides the seal requirements for in-bond merchandise. It requires the carrier (not CBP) to seal the merchandise unless CBP authorizes a waiver; removes the references to the specific types of high security seals and refers instead to the requirements of section 19 CFR 24.13 and 24.13a; requires carriers to transmit the seal number to CBP; and provides that liquidated damages will be assessed against the carrier or other authorized party for any unauthorized removal of the seals. Additionally, former section 18.4a has been incorporated into section 18.4.

Section 18.4a is deleted.

Section 18.5 provides the procedures and requirements for diverting in-bond merchandise. As explained in III.D., the proposed section 18.5 requires CBP permission to divert in-bond merchandise and if permission is granted, requires the merchandise to be delivered to the port of diversion within thirty days from the date that CBP first authorized the in-bond movement. In addition to these changes, the proposed section 18.5 contains a new paragraph (e) prohibiting the diversion of merchandise subject to a law, regulation, rule, standard or ban that requires authorization from another government agency, without the authorization of that agency. Additionally, it deletes the current paragraph (f), requiring permission to divert certain textile products because all diversions will require CBP approval.

Section 18.6 provides the procedures and requirements for the handling of short shipments, shortages, entry and allowance. The proposed changes require that CBP be notified of a short shipment using a CBP-approved EDI system, and also require that a new in-bond application be filed in order to transport short shipped merchandise to the port of destination or port of export.

Section 18.7 provides the requirements and procedures for the verification and lading of merchandise for exportation. It requires the report of arrival to be filed pursuant to section 18.1(i) within 24 hours after the arrival of the merchandise instead of within two working days. It requires that the merchandise be exported within 15 days after the report of arrival was filed with CBP. Otherwise, it will become subject to general order requirements. It also requires the bonded carrier to update the in-bond record within 24 hours of exportation to reflect that the merchandise has been exported and specifies that the port director may require evidence of exportation. Additionally, the proposed amendments would remove the requirement that CBP occasionally verify entries and withdrawals against the exporting carrier's records and instead gives CBP discretion to verify as needed.

Section 18.8 provides the consequences for not meeting the requirements of part 18 and other conditions of the bond, including shortages, irregular delivery or nondelivery. The proposed amendment clarifies that the party whose bond is obligated on the transportation entry, generally the initial carrier, will be liable for the payment of liquidated damages and for the payment of all taxes, duties, fees and charges. This document provides that CBP will consider appropriate commercial or government documentation for determining whether proper delivery occurred.

Section 18.9 which currently governs the examination by inspectors of trunk line associations or agents of the Surface Transportation Board of merchandise transported by rail is deleted and is

replaced with a provision derived from the current section 18.5(c). Portions of the current provision relate to associations that no longer exist and therefore are obsolete. Additionally, the provision relating to the Surface Transportation Board (STB) is duplicative of existing STB legal authority and is therefore unnecessary.

Section 18.10. This section currently governs certain in-bond entries and procedures. Current paragraph (a), which lists the types of in-bond entries, is now contained in proposed section 18.1. Current paragraph (b) on procedures is deleted. Proposed section 18.10 is derived from current section 18.10a, entitled Special Manifest, which governs the processing of merchandise for which no other type of in-bond movement is appropriate. Proposed section 18.10 requires the in-bond filer to follow the filing requirements of section 18.1.

Section 18.10a is deleted.

Section 18.11 regarding IT shipments is significantly amended in this document with many of the current provisions being moved to section 18.1 and being made applicable to all in-bond shipments.

- Paragraph (a) is derived from the current paragraph (c). The proposed paragraph (a) is separated into two paragraphs, the first allowing for the depositing of IT merchandise outside the port limits, and the second providing the procedures for doing so. The provisions of the current paragraph (a) are now encompassed in proposed sections 18.1(l)(2)(iv) and 18.1(l)(1).
- Paragraph (b) is derived from the current paragraph (f). The provisions in current paragraph (b) are now encompassed by proposed section 18.1(c).
- Paragraph (c) is derived from current paragraph (f).
- Current paragraph (d) concerning livestock is deleted because this provision is now encompassed in section 18.1a(l)(2)(v).
- Current paragraph (e) is deleted because this provision is now encompassed in sections 18.1(d)(1)(ii) and 18.1(l)(1) and (2).
- Current paragraph (h) is deleted.
- Current paragraph (i) is deleted.

Section 18.12 regarding the entry procedures at the port of destination is amended by deleting the second portion of paragraph (a). That paragraph pertains to merchandise that hasn't been entered at the port of arrival within six months from the date the merchandise was imported into the origination port. This is now covered in section 18.1 regarding the arrival and disposition of merchandise.

Section 18.13 regarding the shipment of baggage in-bond is amended by deleting the requirement that the baggage be tagged and by requiring filing in accordance with the provisions of section 18.1.

Section 18.14 regarding the shipment of baggage in transit to foreign countries is amended by deleting the requirement that the baggage be tagged.

Section 18.20 regarding the general requirements for transportation and exportation entries is amended by requiring the filing of the in-bond entry pursuant to section 18.1. Additionally, paragraph (c) requires the reporting of the arrival of merchandise at the port of export within 24 hours of arrival, and new paragraph (e) exempts certain merchandise from Electronic Export Information (EEI) filing requirements. A new paragraph (f) is added to require that the in-bond merchandise be exported within 15 calendar days from the date of arrival at the port of export. On the 16th day, the merchandise will become subject to general order requirements under §§ 4.37, 122.50, or 123.10 of this chapter, as applicable. A new paragraph (g) is added to require the bonded carrier to update the in-bond record within 24 hours of exportation to reflect the exportation and to specify that the port director may require evidence of exportation. Current paragraph (c) is deleted.

Section 18.21, regarding restricted and prohibited merchandise, is deleted and reserved because these requirements are encompassed in proposed 18.1(l).

Section 18.22 regarding the procedures for transfers and express shipments at the port of exportation is amended by removing the reference to vessels, thereby making it applicable to all modes of transportation.

Section 18.23 regarding a change in the port of foreign destination is amended by requiring the carrier or other responsible party to notify CBP of a change of foreign destination within 24 hours of learning of the change, via a CBP-approved EDI system. It is further amended by rewording paragraph (b) to more clearly provide that the merchandise is subject to all the conditions that pertain to merchandise entered at a port of first arrival.

Section 18.24 concerns the retention of goods within port limits and the splitting of shipments.

- Paragraph (a) regarding the retention of goods on a dock is amended so that it is applicable to merchandise within the port limits, and not just merchandise on a dock. It is also amended by requiring an in-bond application to retain in-transit merchandise at the port to be filed via a CBP-approved EDI system and by allowing the consent of the owner of the premises to be provided by email or other electronic means. Additionally, it is amended by deleting the sentence stating that the port director may take possession of the merchandise at any time and replacing it with a sentence that addresses what happens when the merchandise remains on the dock beyond the time period authorized by CBP. It provides that merchandise which remains in the port limits without authorization is subject to general order requirements under §§ 4.37, 122.50, or 123.10 of this chapter, as applicable.
- Paragraph (b) regarding split shipments is amended by requiring the application to be filed via a CBP-approved EDI system.

Section 18.25 covers direct exportations.

- Paragraph (a) is derived from the current paragraph (a) and addresses the immediate exportation of prohibited merchandise and carnets. It replaces the reference to Form 7512 with in-bond application.
- Paragraph (b) is new and provides that shipments arriving at a U.S. port by truck, for which an immediate exportation entry is presented as the sole means of entry, will be denied a permit to proceed. It further provides that the truck may be turned back to the country from which it came or, at the discretion of the port director, may be allowed to file a new entry.
- Paragraph (c) requires in-bond merchandise entered for immediate exportation or transportation and exportation to be exported within 15 calendar days from the date of arrival at the port of export.
- Paragraph (d) is derived from the current paragraph (c) and is amended to reflect the changes in 15 CFR part 30 concerning the filing of Electronic Export Information.
- Paragraph (e) is derived from the current paragraph (d) and is largely unchanged.
- Paragraph (f) is derived from the current paragraph (e) and is amended to require the bonded carrier to update the in-bond record within 24 hours of exportation to reflect the exportation.
- Paragraph (g) is derived from the current paragraph (f) and is largely unchanged.
- Paragraph (h) is a new provision and provides that the transfer of articles by express shipment must be in accordance with the procedures set forth in section 18.22.

Section 18.26 concerns the procedures for indirect exportations.

• Paragraph (a) is derived from the first three sentences of the current paragraph (a) and replaces the reference to Customs Form 7512 with an in-bond application. The current paragraph (b), which states that the merchandise shall be forwarded in accordance with the general provisions for transportation in bond, sections 18.1 through 18.8 is deleted because the new section 18.0 regarding the scope of part 18 makes this provision unnecessary.

• Paragraph (b) is derived from the last three sentences of the current paragraph (a) and replaces the reference to Customs Form 7512 with in-bond application.

• Paragraph (c) includes some minor wording changes.

• Paragraph (d) is revised to require that the bonded carrier cause the merchandise to be exported within 15 calendar days from the date of arrival at the port of export. (The current requirement is 30 days).

• Paragraph (e) is a new provision to require the bonded carrier to update the in-bond record within 24 hours of exportation to reflect the exportation and to specify that the port director may require evidence of exportation.

Section 18.27 concerning port marks is amended by replacing Customs with CBP.

Section 18.31 concerning pipeline transportation of bonded merchandise is amended by providing that the in-bond application will be made by submitting a CBP Form 7512. It is also amended by removing the requirement that the document of receipt be submitted with the in-bond document and requiring instead that the document of receipt be submitted with the in-bond application. Additional nomenclature changes are made.

Section 18.41 remains unchanged.

Section 18.42 remains unchanged.

Section 18.43 is largely unchanged other than to provide headings for each of the paragraphs.

Section 18.44 remains unchanged.

Section 18.45 remains unchanged.

Section 18.46 is a new provision and is derived from the current section 18.5(g) governing changes to Importer Security Filing information. This change is explained in more detail in the discussion above in III.I. regarding diversion.

Section 19.15 concerning procedures for the withdrawal for exportation of articles manufactured in-bond is amended by replacing the requirement to file a Customs Form 7512 with the requirement to file an in-bond application pursuant to part 18 of this chapter and by deleting the clause and legend in paragraph (f) relating to flour exports to Cuba.

Section 113.63 concerning bond conditions is amended by adding language in paragraph (c) to require the principal, if a bonded carrier, to report in-bond arrivals in the manner and in the time prescribed by regulation and to export in-bond merchandise in the time periods prescribed by regulation.

Section 122.118 concerning exports from the port of arrival is amended by changing the requirement to export transit air cargo within 10 days to 15 days.

Section 122.119 concerning the transportation of transit air cargo to a final port of destination in the United States, is amended by changing the time in which cargo must be delivered to CBP at the port of destination from 15 days to 30 days.

Section 122.120 concerning the transportation of transit air cargo to another port for exportation, is amended by changing the time in which cargo must be delivered to CBP at the port of exportation from 15 days to 30 days, and by increasing the time in which cargo listed on a transit air cargo manifest must be accounted for from 40 to 45 days. The 45-day time period represents the sum of the proposed 30 days for delivering the cargo to the port of exportation and the proposed 15 days to export the cargo.

Section 123.31 concerning merchandise in transit through the United States from point to point in Canada or Mexico is amended by adding a reference to section 18.1.

Section 123.32 concerning merchandise in transit through the United States from point to point in Canada or Mexico is amended by replacing the requirement to file three copies of a Customs Form 7512 with the requirement to file an in-bond application pursuant to part 18 of this chapter.

Section 123.42 concerning truck shipments transiting the United States from point to point in Canada is amended by requiring the filing of an in-bond application, the reporting of arrival at the U.S. port of export, and the notation by CBP of the waiver of sealing.

Section 123.52 concerning commercial samples transported by automobile through the United States from point to point in Canada is amended to update the section references to conform with the other changes in this proposal.

Section 123.64 concerning baggage in transit through the United States between ports in Canada or Mexico is amended by adding a reference to section 18.1 in paragraph (a) and removing paragraphs (b), (c) and (d).

Section 141.61 concerning completion of statistical information relating to entry and entry summary documentation is amended by changing the reference to CBP Form 7512 to the in-bond application filed pursuant to part 18 of this chapter.

Section 142.18 concerning the exportation of prohibited merchandise is amended by replacing the requirement to file a Customs Form 7512 with the requirement to file an in-bond application pursuant to part 18 of this chapter.

Section 142.28 concerning the withdrawal of prohibited merchandise is amended by replacing the requirement to file a Customs Form 7512 with the requirement to file an in-bond application pursuant to part 18 of this chapter.

Section 143.1(c) concerning the use of the Automated Broker Interface (ABI) to transmit certain information to CBP is amended by removing the provision allowing ABI to be used to transmit forms relating to in-bond movements (CBP Form 7512).

Section 144.22 concerning the transfer of the right to withdraw merchandise is amended by replacing the reference to Customs Form 7512 with a reference to the in-bond application pursuant to part 18 of this chapter.

Section 144.36 concerning withdrawals for transportation is amended by replacing all the references to Customs Form 7512 with references to the in-bond application pursuant to part 18 of this chapter and by changing the reference in section 144.36(g)(4) from section 18.5(d) to section 18.9.

Section 144.37 concerning withdrawal for exportation is amended by replacing all the references to Customs Form 7512 with references to the in-bond application pursuant to part 18 of this chapter and updating the various references to the section in part 18 to conform with the other part 18 changes in this proposal.

Section 146.62 concerning the entry of merchandise into foreign trade zones is amended by replacing the requirement to submit a Customs Form 7512 with the requirement to file an in-bond application pursuant to part 18 of this chapter.

Section 146.66 concerning the transfer of merchandise from one zone to another is amended by replacing the various references to Customs Form 7512 with references to the in-bond application pursuant to part 18 of this chapter and by replacing the words "Customs Form" with "CBP Form" throughout.

Section 146.67 concerning the transfer of merchandise for exportation is amended by replacing the requirement to submit a Customs Form 7512 with the requirement to file an in-bond application pursuant to part 18 of this chapter.

Section 146.68 concerning the use of weekly permits for the transfer of merchandise from a zone is amended by replacing the requirement to use the Customs Form 7512, with the requirement to file an in-bond application pursuant to part 18 of this chapter.

Section 151.9 concerning immediate transportation entry delivered outside port limits is amended by updating the section 18 reference to conform with this proposal.

Section 181.47(b)(2)(ii)(E) concerning completion of a drawback claim for merchandise which is examined at one port but exported through border points outside of that port is amended by replacing "Customs Form 7512" with "In-bond application submitted pursuant to part 18 of this chapter."

IV. Regulatory Analyses

A. Executive Order 12866—Regulatory Planning and Review

Executive Order 12866 (Regulatory Planning and Review; September 30, 1993) requires Federal agencies to conduct economic analyses of significant regulatory actions as a means to improve regulatory decision-making. Significant regulatory actions include those that may "(1) [h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) [c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) [m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) [r]aise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." It has been determined that this rule is not a significant regulatory action.

B. Regulatory Flexibility Act

Under the requirements of the Regulatory Flexibility Act of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (RFA/SBREFA) and E.O. 13272, titled "Proper Consideration of Small Entities in Agency Rulemaking," agencies must consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. CBP is required to prepare a regulatory flexibility analysis and take other steps to assist small entities, unless the Agency certifies that a rule will not have a "significant economic impact on a substantial number of small entities." [14] The U.S. Small Business Administration (SBA) provides guidelines on the analytical process to assess the impact of a particular rulemaking.[15] The following summary presents impact of this rule on small entities.[16]

The types of entities subject to the rule's requirements include originating or bonded carriers, brokers, and other supply chain entities (e.g., exporters, manufacturers and suppliers, cargo consolidators, freight forwarders, 3PLs, and CFS) involved in the transaction filing, conveyance, and arrivals reporting of in-bond goods. If the initial screening analysis (discussed below) indicates that the rule might significantly affect a substantial number of small entities, CBP is required to conduct an Initial Regulatory Flexibility Analysis (IRFA) to further assess these impacts.

Based on FY 2007 in-bond shipment data, we estimate at least 6,180 trade entities could be affected by the rule, including 5,081 non-air carriers (sea vessel, rail, and truck carriers), between 212 and 221 air carriers, and possibly at least 870 other entities (e.g., freight forwarders, cargo consolidators, 3PLs, brokers, and CFS). The specific requirements of the rule (file in-bond transactions electronically, report in-bond arrivals electronically, provide additional data elements, request diversions, and meet allowable in-bond transit times) will affect all of these entities in some way. CBP lacks the data necessary to quantify the incremental cost of the rule or differentiate these costs by entity type, including size and nationality (many of the entities affected are likely foreign). Instead, we discuss these costs qualitatively. The following exhibit lists various alternatives CBP considered in developing this rule and characterizes their costs.

[14] Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 *et seq.*

[15] U.S. SBA, Office of Advocacy, "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, Implementing the President's Small Business Agenda and Executive Order 13272," May 2003.

[16] The complete "Regulatory Flexibility Analysis and IRFA" can be found in the docket for this rulemaking: *http://www.regulations.gov.*

EXHIBIT 3—RELATIVE COSTS OF REGULATORY ALTERNATIVES

Regulatory alternative	Proposed requirements	Relative cost
1 (Chosen alternative)	1. File all in-bond application forms electronically ..... 2. Submit additional in-bond shipment data and information. 3. Maximum in-bond transit time of 30 days. 4. Request permission prior to diverting in-bond cargo electronically. 5. Report in-bond arrivals electronically within 24 hours.	Highest All of the proposed requirements or changes to the in-bond regulations are implemented. Entities filing in-bond forms and/or reporting in-bond arrivals by paper only (582 non-air carriers plus an unknown number of air carriers and other filers) would have to obtain electronic access to CBP or retain a third party agent or service provider. All entities (5,081 non-air carriers plus an unknown number of air carriers and other filers) would have to obtain and provide additional in-bond shipment data to CBP by reprogramming their existing business and information systems and processes, using a third-party service provider, or relying on their trade partners. Those entities reporting arrivals (4,388 non-air carriers plus an unknown number of air carriers and other filers) would have to reprogram their existing business and information systems and processes or use a third party service provider to electronically report arrivals within 24 hours with the location of the merchandise.
2	1. File all in-bond application forms electronically ..... 3. Maximum in-bond transit time of 30 days. 4. Request permission prior to diverting in-bond cargo electronically. 5. Report in-bond arrivals electronically within 24 hours.	Lower Costs are lower than Alternative #1 because the costs associated with obtaining and providing the additional in-bond shipment data and information would not be incurred, which could be significant for the most frequent filers. However, overall costs could still be significant to comply with the requirement of reporting arrivals within 24 hours.
3	1. File all in-bond application forms electronically ..... 3. Maximum in-bond transit time of 30 days 4. Request permission prior to diverting in-bond cargo electronically.	Lowest Costs are lowest of the three regulatory alternatives because only a relatively small number of entities that currently file in-bond forms by paper only (537 non-air carriers plus an unknown number of air carriers and other filers) would be affected. These entities must obtain electronic access to CBP or retain a third party agent or service provider.

To determine whether a substantial number of small entities would be affected by the rule, we ideally would have employment and revenue information and data for all affected entities. The SBA defines entities as "small" if they fall below certain size standards in their industry (as defined by a North American Industry Classification System (NAICS) Code), such as the number of employees or average annual receipts.[17] However, we do not have this information, as well as information identifying all of the entities that may be affected.[18] Other available descriptive data such as in-bond shipment or transaction volume, transaction type, and whether an entity files in-bond transactions or report in-bond arrivals are unreliable since they may not necessarily be related to entity size.

As a result, we use national data on entities in the affected industries from the SBA to determine whether a substantial number of small entities are likely to be affected by the rule. Use of these data is imperfect because not all entities included in the SBA data set participate in the processing and movement of in-bond goods. Based on these data, nearly all of the entities in all industry groups likely to be affected by the proposed rule are small. CBP concludes, therefore, that a substantial number of small entities are likely to be affected by the proposed rule. CBP has characterized but can not estimate the potential costs to entities of complying with the rule as proposed. As a result, we cannot quantify the impact on small entities. We, therefore, conclude that the rule may significantly affect a substantial number of small entities, and provide a summary of the IRFA prepared to further assess these impacts.

Summary IRFA

The description of the proposed requirements, the legal basis for the proposed rule, and the number and types of entities affected have been described elsewhere in this preamble and are not repeated here.

The reporting and recordkeeping skills needed are professional skills necessary for preparation of electronic in-bond transactions, arrivals notifications, and diversion requests. These include basic administrative, recordkeeping, and information technology skills used to manage data transaction, shipment, manifest, security, and other data used in the commercial supply chain environment, along with a working knowledge of import shipment arrangements, brokerage, conveyance/shipping, consolidation, and customs procedures and regulation.

CBP is unaware of other relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

[17] U.S. SBA. Summary of Size Standards by Industry, as viewed at *http://www.sba.gov/contractingopportunities/officials/size/summaryofssi/index.html* on July 28, 2010.

[18] We only have limited data on 5,081 uniqu non-air carriers, which comprise at most about 82 percent of all affected entities.

CBP does not at this time identify any significant regulatory alternatives to the rule that specifically address small entities while also meeting the rule's objective, which is to improve CBP's ability to regulate, track, and control in-bond cargo and to ensure that proper duties are paid or that the in-bond merchandise is exported. As described above, we evaluated three regulatory alternatives to consider changes in the in-bond requirements, including those that minimize the incremental cost burden to carriers, brokers, and agents, including small entities.

Though we cannot determine the precise number of small entities affected by the rule, we conclude that the number will be substantial, including small carriers, brokers, and other entities involved in the transaction filing, conveyance, and arrivals reporting of in-bond goods. However, based on the data limitations discussed in this chapter and the sources of uncertainty discussed below, we are uncertain whether the costs borne by these small entities (e.g., filing in-bond transactions electronically, providing additional in-bond shipment data and information, requesting diversions electronically, reporting in-bond arrivals electronically within 24 hours) will be significant. Therefore, based on the results of this analysis, CBP believes that the rule may have a significant economic impact on a substantial number of small entities. As a result, CBP has prepared an IRFA and seeks comments on this conclusion. The complete "IFRA" can be found in the docket for this rulemaking: *http://www.regulations.gov.*

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule is exempt from these requirements under 2 U.S.C. 1503 (Exclusions) which states that UMRA "shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that is necessary for the national security or the ratification or implementation of international treaty obligations." [19]

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) the collections of information for this NPRM are included in an existing collection for CBP Form 7512 and 7512A (OMB control number 1651–0003). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The estimated burden hours related to CBP Form 7512 and 7512A for OMB Control number 1651–0003 are as follows:

Estimated Number of Respondents: 6,200.

Estimated Number of Responses: 5,400,000.

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 896,400.

The burden hours in this collection have been updated to reflect revised and updated estimates of filers of CBP Form 7512. These most recent data available are also used in the Regulatory Assessment summarized above.

V. Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

Proposed Regulatory Amendments

List of Subjects

19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 10

Caribbean Basin initiative, Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 18

Common carriers, Customs duties and inspection, Exports, Freight, Penalties, Reporting and recordkeeping requirements, and Surety bonds.

19 CFR Part 19

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements, Surety bonds, Warehouses, Wheat.

19 CFR Part 113

Common carriers, Customs duties and inspection, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 122

Common carriers, Customs duties and inspection, Exports, Freight, Penalties, Reporting and recordkeeping requirements, and Security measures.

19 CFR Part 123

Canada, Customs duties and inspection, Freight, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 142

Canada, Customs duties and inspection, Mexico, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 144

Customs duties and inspection, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 146

Administrative practice and procedure, Customs duties and inspection, Exports, Foreign trade zones, Penalties, Petroleum, Reporting and recordkeeping requirements.

19 CFR Part 151

Cigars and cigarettes, Cotton, Customs duties and inspection, Fruit juices, Laboratories, Metals, Oil imports, Reporting and recordkeeping requirements, Sugar.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendments to the Regulation

For the reasons set forth in the preamble, it is proposed to amend parts 4, 10, 18, 113, 122, 123, 141, 142, 143, 144, 146, 151, and 181 of title 19 of the Code of Federal Regulations as set forth below.

[19] "Unfunded Mandates Reform Act of 1995 (UMRA)," 2 U.S.C. 1503.

19 CFR CHAPTER 1—AMENDMENTS

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

2. In § 4.82, revise paragraph (b) to read as follows:

§ 4.82 Touching at foreign port while in coastwise trade.

* * * * *

(b) The master must also present to the port director a coastwise Cargo Declaration in triplicate of the merchandise to be transported via the foreign port or ports to the subsequent ports in the United States. It must describe the merchandise and show the marks and numbers of the packages, the names of the shippers and consignees, and the destinations. The port director will certify the two copies and return them to the master. Merchandise carried by the vessel in bond under a transportation entry pursuant to part 18 of this chapter is not to be shown on the coastwise Cargo Declaration.

* * * * *

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

3. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

4. In § 10.60, revise paragraphs (a) and (d) to read as follows:

§ 10.60 Forms of withdrawals; bond.

(a) Withdrawals from warehouse shall be made on CBP Form 7501. Each withdrawal must contain the statement prescribed for withdrawals in § 144.32 of this chapter and all of the statistical information as provided in § 141.61(e) of this chapter. Withdrawals from continuous CBP custody elsewhere than in a bonded warehouse must be made by filing an in-bond application pursuant to part 18 of this chapter, except as provided for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is proceeding in ballast to another port as provided for by § 10.59(a)(3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known.

* * * * *

(d) Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be used within 30 days of such withdrawal as supplies on aircraft under § 309, Tariff Act of 1930, as amended, when the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading by filing an in-bond application pursuant to part 18 of this chapter. The procedure shall be the same as that prescribed in 144.37 of this chapter.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

5. The general authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

6. Revise § 12.5 to read as follows:

§ 12.5 Shipment to other ports.

When imported merchandise, the subject of § 12.1, is shipped to another port for reconditioning or exportation, such shipment must be made in the same manner as shipments in bond in accordance with the requirements of part 18 of this chapter.

7. In § 12.11, revise paragraph (b) to read as follows:

§ 12.11 Requirements for entry and release.

* * * * *

(b) Where plant or plant products are shipped from the port of first arrival to another port or place for inspection or other treatment by a representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and all CBP requirements for the release of the merchandise have been met, the merchandise must be forwarded as an in-bond shipment pursuant to part 18 of this chapter to the representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs at the place at which the inspection or other treatment is to take place. No further release by the port director will be required.

* * * * *

8. Revise part 18 to read as follows:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Subpart A—General Provisions

Sec.

18.0 Scope; definitions.
18.1 In-bond application and entry; general rules.
18.2 Carriers, cartmen and lightermen.
18.3 Transshipment; transfer by bonded cartmen.
18.4 Sealing conveyances and compartments; labeling packages.
18.5 Diversion.
18.6 Short shipments; shortages; entry and allowance.
18.7 Lading for exportation, verification.
18.8 Liability for not meeting in-bond requirements; liquidated damages; payment of taxes, duties, fees, and charges.
18.9 New in-bond movement for forwarded or returned merchandise.
18.10 Special Manifest.

Subpart B—Immediate Transportation Without Appraisement

18.11 General Rules.
18.12 Entry at port of destination.

Subpart C—Shipment of Baggage In-Bond

18.13 Procedure; manifest.
18.14 Shipment of baggage in transit to foreign countries.

Subpart D—Transportation and Exportation

18.20 General rules.
18.21 [Reserved].
18.22 Transfer and express shipment procedures at port of exportation.
18.23 Change of foreign destination; change of entry.
18.24 Retention of goods within port limits; splitting of shipments.

Subpart E—Immediate Exportation

18.25 Direct exportation.
18.26 Indirect exportation.
18.27 Port marks.

Subpart F—Merchandise Transported by Pipeline

18.31 Pipeline transportation of bonded merchandise.

Subpart G—Merchandise Not Otherwise Subject to Customs Control Exported Under Cover of a TIR Carnet

18.41 Applicability.
18.42 Direct exportation.
18.43 Indirect exportation.
18.44 Abandonment of exportation.
18.45 Supervision of exportation.

Subpart H—Importer Security Filings

18.46 Changes to Importer Security Filing information.

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624; Section 18.1 also issued under 19 U.S.C. 1484, 1557, 1490; Section 18.2 also issued under 19 U.S.C. 1551a; Section 18.3 also issued under 19 U.S.C. 1565; Section 18.4 also issued under 19 U.S.C. 1322, 1323; Section 18.7 also issued under 19 U.S.C. 1490, 1557; 1646a; Section 18.11 also issued under 19 U.S.C. 1484; Section 18.12 also issued under 19 U.S.C. 1448, 1484, 1490; Section 18.13 also issued under 19 U.S.C. 1498(a); Section 18.14 also issued under 19 U.S.C. 1498. Section 18.25 also issued under 19 U.S.C. 1490. Section

18.26 also issued under 19 U.S.C. 1490. Section 18.31 also issued under 19 U.S.C. 1553a.

Subpart A—General Provisions

§ 18.0 Scope; definitions.

(a) *Scope.* Except as provided in parts 122 and 123 of this chapter, this part sets forth the requirements and procedures pertaining to the transportation of merchandise in-bond, as authorized by sections 551, 552, and 553 of the Tariff Act of 1930, as amended (19 U.S.C. 1551, 1552, and 1553).

(b) *Definitions.* As used in this part, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular part or portion thereof:

Common carrier. "*Common carrier*" means a common carrier of merchandise owning or operating a railroad, steamship, pipeline, truck line, or other transportation line or route.

Origination port. "*Origination port*" is the U.S. port in which the transportation of merchandise in-bond commences.

Port of destination. "*Port of destination*" is the U.S. port at which merchandise is entered after being shipped in-bond from the origination port where it was entered as an immediate transportation entry.

Port of diversion. "*Port of diversion*" is the U.S. port to which merchandise is diverted while in transit from the origination port to the port of destination or the port of export.

Port of export. "*Port of export*" is the U.S. port at which in-bond merchandise entered for transportation and exportation or for immediate exportation is exported from the U.S.

§ 18.1 In-bond application and entry; general rules.

(a) *General requirement.* In order to transport merchandise in-bond, an in-bond application as described in paragraph (d) of this section is required. An in-bond application consists of a transportation entry and a manifest. A transportation entry as described in paragraph (b) may be made for any imported merchandise upon its arrival at a port of entry, subject to the prohibitions and restrictions provided in this part.

(b) *Types of transportation entries and withdrawals.* The following types of transportation entries and withdrawals may be made for merchandise to be transported in-bond:

(1) Entry for immediate transportation (IT).

(2) Warehouse or rewarehouse withdrawal for immediate transportation.

(3) Warehouse or rewarehouse withdrawal for immediate exportation or for transportation and exportation.

(4) Entry for transportation and exportation (T&E).

(5) Entry for immediate exportation (IE).

(6) Entry of vessel and aircraft supplies for immediate exportation (IE) or for transportation and exportation (T&E).

(7) Entry of vessel and aircraft supplies for transportation and exportation (T&E).

(c) *Who may file.* A transportation entry may be made by:

(1) The carrier that brings the merchandise to the origination port;

(2) The carrier that is to accept the merchandise under its bond or a carnet for transportation to the port of destination or the port of export; or

(3) Any person who has a sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to CBP.

(d) *In-bond application.* An in-bond application consisting of a transportation entry and manifest must be transmitted to CBP in order to transport merchandise in-bond.

(1) *Contents.* The in-bond application must contain the following information:

(i) *Description of the merchandise.* The six-digit Harmonized Tariff Schedule (HTS) number of the merchandise must be provided, if available. (CBP will also accept the eight or ten-digit HTS number.) If the six digit HTS number is not available, then a detailed description must be provided setting forth the exact nature of the merchandise with sufficient detail to enable CBP and other government agencies to determine if the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation.

(ii) *Health, safety or conservation.* If the carrier or other responsible party submitting the in-bond application knows that the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation enforced by CBP or another government agency, a statement must be provided setting forth the rule, regulation, law, standard or ban to which the merchandise is subject to and the name of the government agency responsible for enforcing the rule, regulation, law, standard or ban.

(iii) *Prohibited or restricted merchandise.* Merchandise that is prohibited or subject to entry restrictions in the U.S. as set forth in this chapter must be identified accordingly.

(iv) *Textiles.* Textiles and textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), must be described in such detail as to enable the port director to estimate the duties and taxes, if any, due. The port director may require evidence to satisfy him or her of the approximate correctness of the value and quantity stated in the entry (e.g., detailed quantity description: 14 cartons, 2 dozen per carton); detailed description of the textiles or textile products including type of commodity and chief fiber content (e.g., men's cotton jeans or women's wool sweaters); net weight of the textiles or textile products (including immediate packing but excluding pallet); total value of the textiles or textile products; manufacturer or supplier; country of origin; name(s) and address(es) of the person(s) to whom the textiles and textile products are consigned; and 10-digit Harmonized Tariff Schedule of the United States number (when available).

(v) *Other identifying information.* If a visa, permit, license, entry number, or other similar number or identifying information has been issued by the U.S. Government, foreign government or other issuing authority, relating to the merchandise, the visa, permit, license, entry number, or other similar number or identifying information must be provided.

(vi) *Quantity.* The quantity of the merchandise to be transported to the smallest piece count must be provided.

(vii) *Seals.* The container number of the container in which the merchandise is being transported and the seal number of the seal that seals the container (see § 18.4) must be provided.

(viii) *Ultimate destination.* The ultimate destination in the U.S. or abroad of the merchandise to be transported in-bond must be provided.

(2) *Method of submission.* The in-bond application must be electronically transmitted to CBP via a CBP-approved EDI system, except as prescribed in § 18.31 relating to pipeline transportation of bonded merchandise.

(3) *Timing.* The in-bond application may be submitted at any time prior to the merchandise departing the origination port.

(4) *Quantities of goods.* By filing an in-bond application, the initial bonded carrier asserts that there is no discrepancy between the quantity of goods received from the importing carrier and the quantity of goods delivered to the in-bond carrier for transportation in-bond.

(e) *Bond required.* A custodial bond on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter, is required in order to transport merchandise in-bond under the provisions of this part.

(f) *Movement authorization required.* Authorization from CBP is required before merchandise can be transported in-bond. Authorization for the movement of merchandise will be transmitted by CBP via a CBP-approved EDI system.

(g) *Supervision*—(1) *Generally.* When merchandise is delivered to a bonded carrier for transportation in-bond, CBP may, in its discretion, require that the merchandise be laden on the conveyance only under CBP supervision.

(2) *Merchandise delivered from warehouse.* When merchandise is delivered from a warehouse to a bonded carrier for transportation in-bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

(3) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in-bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter.

(h) *Updating and amending the in-bond record.* The filer of the in-bond application or any other party named in paragraph (c) of this section, with the permission of the filer, may update and/or amend the in-bond record as required under the provisions of this part via a CBP-approved EDI system.

(i) *In-Transit Time*—(1) *30-day transit time.* Merchandise to be transported in-bond must be delivered to CBP at the port of destination or port of export within 30 days from the date CBP provides movement authorization to the in-bond applicant. Neither the diversion to another port nor the filing of a new in-bond application extends the 30-day maximum in-transit time. Failure to deliver the merchandise within the prescribed period constitutes an irregular delivery.

(2) *Extension.* In cases where it is anticipated that a shipment will not be capable of completing its transit to the port of destination or port of export within 30 days, the 30-day in-transit requirement may be extended by CBP upon request via a CBP-approved EDI system. CBP may also extend the in-transit period if delays are caused due to the examination or inspection of the merchandise by CBP or another government agency or for some other reason.

(3) *Restriction of in-transit time.* CBP or any other government agency with jurisdiction over the merchandise may shorten the in-transit time to less than 30 days. CBP will provide notice of a CBP-shortened in-transit time with the movement authorization.

(j) *Report of Arrival.* After the arrival of any portion of the in-bond shipment at the port of destination or the port of export, the delivering carrier must promptly, but no more than 24 hours after arrival, notify CBP via a CBP-approved EDI system that the merchandise has arrived and identify the physical location of the merchandise within the port. Failure to report the arrival or identify the physical location of the merchandise transported in-bond within the prescribed period constitutes an irregular delivery.

(k) *General order merchandise; exportation.* Any merchandise covered by an in-bond shipment (including carnets) that has arrived at the port of destination or the port of export must be entered or exported pursuant to this part within 15 calendar days from the date of arrival at the port of destination or port of export. On the 16th day, the merchandise will become subject to general order requirements pursuant to 19 CFR 4.37, 122.50, or 123.10 of this chapter, as applicable. In addition, failure to enter or export the merchandise within the prescribed period constitutes an irregular delivery.

(l) *Restricted and prohibited merchandise; health, safety and conservation; and special classes of merchandise*—(1) *Health, safety and conservation.* Merchandise not in compliance with an applicable rule, regulation, law, standard or ban, relating to health, safety or conservation may only be released for transportation in-bond with the authorization of the governmental agency administering such rule, regulation, law, standard or ban.

(2) *Prohibited and restricted merchandise*—(i) *Plants and plant products.* Merchandise subject upon importation to examination, disinfection, or further treatment under the Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine program, will be only be released for transportation in-bond with the authorization of APHIS under regulations issued by that program. (See §§ 12.10 to 12.15 of this chapter).

(ii) *Narcotics and other prohibited articles.* Narcotics and other articles prohibited admission into the commerce of the United States may not be entered for transportation in-bond and any such merchandise offered for entry for that purpose will be seized, except that exportation or transportation and exportation may be permitted with authorization from the Drug Enforcement Agency (DEA) and/or compliance with the regulations of the DEA.

(iii) *Non-narcotics.* Articles entered for transportation in-bond that are manifested merely as drugs, medicines, or chemicals, without evidence to satisfy the port director that they are non-narcotic, will be detained and subjected, at the carrier's risk and expense, to such examination as may be necessary to satisfy the port director whether or not they are of a narcotic character. A properly verified certificate of the shipper, specifying the items in the shipment and stating whether narcotic or not, may be accepted by the port director to establish the character of such a shipment.

(iv) *Explosives.* Explosives may not be transported in-bond unless the importer has first obtained a license or permit from the proper governmental agency. In such case the explosives may be entered for immediate transportation, for transportation and exportation, or for immediate exportation as specified by the approving government agency. Governmental agencies with regulatory authority over explosives include the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Department of Transportation (DOT), and the U.S. Coast Guard (USCG).

(v) *Livestock.* Carload shipments of livestock will not be entered for in-bond transportation unless they will arrive at the port of destination named in the in-bond application before it becomes necessary to remove the seals for the purpose of watering and feeding the animals, or unless the route is such that the removal of the seals and the watering, feeding, and reloading of the stock may be done under CBP supervision.

§ 18.2 Carriers, cartmen and lightermen.

(a) *Transportation of merchandise in-bond by bonded carriers.* (1) Except as provided for in paragraph (b) of this section, merchandise to be transported from one port to another in the United States in-bond must be delivered to a common carrier, contract carrier, freight forwarder, or private carrier, each of which must be bonded for that purpose. Such merchandise delivered to a bonded common carrier, contract carrier, or freight forwarder may be transported with the use of facilities of other bonded or nonbonded carriers; however, the responsibility for the merchandise will remain with the

common carrier, contract carrier, or freight forwarder that is bonded for that purpose. Only vessels entitled to engage in the coastwise trade (see § 4.80 of this chapter) will be entitled to transport merchandise under this section.

(2) *Merchandise transported under a TIR carnet.* Merchandise to be transported from one port to another in the United States under cover of a TIR carnet (see part 114 of this chapter), except merchandise not otherwise subject to CBP control, as provided in §§ 18.41 through 18.45, must be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The TIR carnet will be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond will be responsible as provided in § 114.22(c) of this chapter.

(3) *Merchandise transported under an A.T.A. or a TECRO/AIT carnet.* Merchandise to be transported from one port to another in the United States under cover of an A.T.A. or TECRO/AIT carnet (see part 114 of this chapter) must be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The A.T.A. or TECRO/AIT carnet will be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond will be responsible as provided in § 114.22(d) of this chapter.

(b) *Transportation of merchandise in-bond between certain ports by bonded cartmen or lightermen.* Pursuant to Public Resolution 108, of June 19, 1936, (19 U.S.C. 1551, 1551a) and subject to compliance with all other applicable provisions of this part, CBP, upon the request of a party named in § 18.1(c), may permit merchandise that has been entered and subject to CBP examination to be transported in-bond between the ports of New York, Newark, and Perth Amboy, by bonded cartmen or lightermen duly qualified in accordance with the provisions of part 112 of this chapter, if CBP is satisfied that the transportation of such merchandise in this manner will not endanger the revenue and does not pose a risk to health, safety or security.

§ 18.3 Transshipment; transfer by bonded cartmen.

(a) *Transshipment to single conveyance.* Merchandise being transported in-bond may be transshipped to another conveyance while en route to the port of destination or port of export. The carrier or any of the parties provided for in § 18.1(c) must notify CBP of the transshipment using the CBP-approved EDI system before the merchandise can be transshipped to another conveyance. The notification of transshipment must include the name of the bonded carrier receiving the merchandise for shipment to the port of destination or port of export.

(b) *Transshipment to multiple conveyances.* When merchandise being transported in-bond is to be transshipped to more than one conveyance, the carrier or any of the parties named in § 18.1(c) must notify CBP via a CBP-approved EDI system of the transshipment. The notification of transshipment must include the name of the bonded carrier receiving the merchandise for shipment to the port of destination or port of export and any new container or seal numbers. The transshipment to multiple conveyances does not extend the 30-day transit time requirement set forth in § 18.1(i).

(c) *Transshipment of merchandise covered by a TIR carnet generally prohibited.* Merchandise covered by a TIR carnet may not be transshipped except in cases in which the unlading of the merchandise from a container or road vehicle is necessitated by casualty en route. In the event of transshipment, a TIR approved container or road vehicle must be used if available. If the transshipment takes place under CBP supervision, the CBP officer must execute a certificate of transfer on the appropriate TIR carnet voucher.

(d) *Transshipment of merchandise in emergency situations*—(1) *Removal of seals.* If it becomes necessary at any point in transit to remove the CBP seals from a conveyance or container containing bonded merchandise for the purpose of transferring its contents to another conveyance or container, or to gain access to the shipment because of casualty or for other good reason, and it cannot be done under CBP supervision because of the element of time involved or because there is no CBP officer stationed at such point, a responsible agent of the carrier may remove the seals, supervise the transfer or handling of the merchandise, and seal the conveyance or container in which the shipment goes forward. In this situation, the responsible agent is required to provide the notification specified in paragraph (d)(2) of this section.

(2) *Notification.* When the responsible agent of the carrier takes the actions specified in paragraph (d)(1) of this section, he or she must notify CBP via the CBP-approved EDI system of the serial numbers of the new seals applied, and the reason for and the date of the actions. The responsible agent must also make appropriate notations of the same information on the conductor's or master's copy of the manifest, or the outside back cover of the TIR carnet.

(e) *Transfer by bonded cartmen.* All transfers to or from the conveyance or warehouse of merchandise undergoing transportation in-bond must be made under the provisions of part 125 of this chapter and at the expense of the parties in interest, unless the bond of the carrier on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter or a TIR carnet is liable for the safekeeping and delivery of the merchandise while it is being transferred.

§ 18.4 Sealing conveyances and compartments; labeling packages.

(a) *Requirements, waiver and TIR carnets*—(1) *Seals required.* The bonded carrier must ensure that carload or containerized shipments are properly sealed, that the seals remain intact until the merchandise arrives at the port of destination or the port of export, and that CBP is notified of such arrival pursuant to § 18.1(j) of this part. The seals to be used and the method for sealing conveyances, compartments, or packages must meet the requirements of §§ 24.13 and 24.13a of this chapter.

(2) *Waiver.* (i) CBP may authorize the waiver of sealing of a conveyance or compartment in which bonded merchandise is transported if CBP determines that the sealing of the conveyance or compartment is unnecessary to protect the revenue or to prevent violations of the customs laws and regulations.

(ii) Examples of situations where CBP my authorize a waiver of the sealing requirement include when the compartment or conveyance cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges, on the decks of vessels, or when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches.

(3) *TIR carnets.* The port director will cause a CBP seal to be affixed to a container or road vehicle that is being used to transport merchandise under cover of a TIR carnet unless the container or road vehicle bears a customs seal (domestic or foreign). The port director will likewise cause a CBP seal or label to be affixed to heavy or bulky goods being so transported. If,

however, the port director has reason to believe that there is a discrepancy between the merchandise listed on the Goods Manifest of the carnet and the merchandise that is to be transported, the port director may cause a CBP seal or label to be affixed only when the listing of the merchandise in the carnet and a physical inventory agree.

(b) *Commingled merchandise.* (1) Merchandise that is not covered by a bond may only be transported in a sealed conveyance or compartment that contains bonded merchandise if the merchandise is destined for the same or subsequent port as the bonded merchandise.

(2) Merchandise moving under cover of a carnet may not be consolidated with other merchandise.

(c) *Removal or breaking of seals.* Except as provided in § 18.3(d) and § 19.6(e) of this chapter, seals affixed under this section may only be removed upon CBP permission. Failure to keep the seals intact and/or removal of the seals without CBP permission will result in the assessment of liquidated damages in accordance with § 18.8 of this part and § 113.63 of this chapter.

(d) *Containers or road vehicles accepted for transport under customs seal; requirements—*

(1)(i) *Containers covered by the Customs Convention on Containers.* Containers covered by the Customs Convention on Containers shall be accepted for transport under customs seal if

(A) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, and

(B) Constructed and equipped as outlined in Annex 1 to the Customs Convention on Containers, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 2 to that Convention or by a metal plate showing design type approval by a competent authority.

(ii) *Containers carrying merchandise covered by a TIR carnet.* Containers carrying merchandise covered by a TIR carnet shall be accepted for transport under customs seal if

(A) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers,

(B) Constructed and equipped as outlined in Annex 6 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 8 to that Convention, or by a metal plate showing design type approval by a competent authority, and

(C) If the container or road vehicle hauling the container has affixed to it a rectangular plate bearing the letters "TIR" in accordance with Article 31 of the TIR Convention.

(2) *Road vehicles carrying merchandise covered by a TIR carnet.* Road vehicles carrying merchandise covered by a TIR carnet shall be accepted for transport under customs seal if

(i) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers,

(ii) Constructed and equipped as outlined in Annex 3 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 5 to that Convention, or by a metal plate showing design type approval by a competent authority, and

(iii) If the road vehicle has affixed to it a rectangular plate bearing the letters "TIR" in accordance with Article 31 of the TIR Convention.

(3) *CBP refusal.* The port director may refuse to accept for transport under customs seal a container or road vehicle bearing evidence of approval if, in the port director's opinion, the container or road vehicle no longer meets the requirements of the applicable Convention.

(4) *CBP acceptance for transport.* Containers or road vehicles that are not approved under the provisions of a Customs Convention may be accepted for transport under customs seal only if the port director at the port of origin is satisfied that the container or road vehicle can be effectively sealed and no goods can be removed from or introduced into the container or road vehicle without obvious damage to it or without breaking the seal. A container or road vehicle so accepted shall not carry merchandise covered by a TIR carnet.

§ 18.5 Diversion.

(a) *Procedure.* In order to change the port of destination or the port of export of an in-bond movement, the party that submitted the in-bond application must submit a request to divert merchandise via a CBP-approved EDI system. Authorization for the diversion and movement of merchandise will be transmitted via a CBP-approved EDI system. If the request to divert merchandise is denied, such merchandise must be delivered to the original port of destination or port of export that was named in the in-bond application. The decision to grant or deny permission to divert merchandise is within the sole discretion of CBP.

(b) *In-Transit Time.* The approval of a request to divert merchandise for transportation in-bond does not extend the in-transit time specified in § 18.1(i) of this part. The diverted merchandise must be delivered to the port of diversion within 30 days from the date CBP first authorized the in-bond movement.

(c) *Split Shipments.* When merchandise for transportation in-bond is approved for diversion to more than one port, or when a portion of an in-bond shipment is approved for consumption or warehouse entry, the approval of the diversion will complete the original transportation entry. The carrier or any of the parties named in § 18.1(c) must, in accordance with the filing requirements of § 18.1, submit a new in-bond application for each portion of the original shipment to be transported in-bond. Split shipments for merchandise being transported under cover of a carnet are prohibited.

(d) *Diversion of cargo subject to restriction, prohibition or regulation by other federal agency or authority.* Merchandise subject to a law, regulation, rule, standard or ban that requires permission or authorization by another federal agency or authority before importation, cannot be diverted without authorization by the other federal agency or authority.

§ 18.6 Short shipments; shortages; entry and allowance.

(a) *Notification of short shipment.* When an in-bond shipment arrives at the port of destination or the port of export and a portion of the cargo covered by the original in-bond application is short, the arriving carrier must notify CBP of the shortage when submitting the notice of arrival via a CBP-approved EDI system.

(b) *New in-bond application required.* The carrier or any of the parties named in § 18.1(c) must, in accordance with the filing requirements of § 18.1, submit a new in-bond application to transport short shipped packages in-bond to the port of destination or port of export provided in the in-bond application. Reference must be made in the new in-bond application to the original transportation entry.

(c) *Demand for redelivery.* When there is a shortage of any portion of a shipment, nondelivery of an entire shipment, delivery to unauthorized locations, or delivery to the consignee without the permission of CBP, CBP may demand return of the merchandise to CBP custody. The demand must be made no later than 30 days after the shortage, delivery, or nondelivery is discovered by CBP. The demand for the

return of the merchandise to CBP custody must be made on the bonded carrier, cartman, or lighterman identified in the in-bond application. The demand for the return of the merchandise will be made on CBP Form 4647, Notice of Redelivery, other appropriate form, letter, or by an electronic equivalent thereof. A copy of the demand or electronic equivalent thereof, with the date of mailing or delivery noted thereon, must be retained by the port director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity will be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

(d) *Failure to redeliver.* If the merchandise cannot be recovered intact, entry will be accepted in accordance with § 141.4 of this chapter for the full manifested quantity, unless a lesser amount is otherwise permitted in accordance with subpart A of part 158. Except as provided in paragraph (e) of this section, if the merchandise is not returned to CBP custody within 30 days of the date of mailing, date of delivery of the demand for redelivery, or electronic notification thereof, there shall be sent to the party whose bond is obligated on the transportation entry a demand for liquidated damages on CBP Form 5955–A in the case of nondelivery of an entire shipment or on CBP Form 5931 in the case of partial shortage. CBP will also seek the payment of duties, taxes, and fees, where appropriate, pursuant to § 18.8(c).

(e) *Failure to redeliver merchandise covered by a carnet.* If merchandise covered by a carnet cannot be recovered intact as specified in paragraph (c) of this section, entry will not be accepted; there will be sent to the appropriate guaranteeing association a demand for liquidated damages, duties, and taxes as prescribed in § 18.8(d); and, if appropriate, there will also be sent to the initial bonded carrier a demand for any excess, as provided in § 114.22(e) of this chapter. Demands must be made on the forms specified in paragraph (d) of this section.

(f) *Allowance.* An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, must be made in the liquidation of the entry.

(g) *Rail and seatrain.* In the case of shipments arriving in the United States by rail or seatrain, which are forwarded under CBP in-bond seals under the provisions of subpart D of part 123 of this chapter, and § 18.11, or § 18.20, a notation must be made by the carrier or shipper on the in-bond application, to show whether the shipment was transferred to the car designated in the manifest or whether it was laden in the car in the foreign country. If laden on the car in a foreign country, the country must be identified in the notation.

§ 18.7 Lading for exportation; notice and proof of exportation; verification.

(a) *Exportation*—(1) *Notice.* No more than 24 hours after the arrival at the port of export of any portion of an in-bond shipment, the delivering carrier must report the arrival of the merchandise to CBP pursuant to § 18.1(i). Failure to report the arrival of bonded merchandise within the prescribed period will constitute an irregular delivery.

(2) *Time to export.* Within 15 calendar days after the filing of the report of arrival for the last portion of a shipment arriving at the port of export under a transportation and exportation entry, the entire shipment of merchandise must be exported. On the 16th day the merchandise will become subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable. Failure to export the merchandise within the prescribed period constitutes an irregular delivery.

(3) *Notice and Proof of Exportation.* The bonded carrier must promptly, but no more than 24 hours after exportation, update the in-bond record via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

(b) *Supervision.* The port director will require only such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation only as is reasonably necessary to satisfy the port director that the merchandise has been laden on the exporting conveyance.

(c) *Verification.* CBP may verify export entries and withdrawals against the records of the exporting carriers. Such verification may include an examination of the carrier's records of claims and settlement of export freight charges and any other records that may relate to the transaction. The exporting carrier must maintain these records for 5 years from the date of exportation of the merchandise.

§ 18.8 Liability for not meeting in-bond requirements; liquidated damages; payment of taxes, duties, fees, and charges.

(a) *Liability.* The party whose bond is obligated on the transportation entry (generally the initial carrier) will be liable for not meeting any of the requirements found at Part 18 of this chapter or any of the other conditions specified in the bond. This includes, but is not limited to shortages, irregular delivery, or nondelivery, at the port of destination or port of export of the merchandise transported in-bond; the failure to export merchandise transported in bond pursuant to a transportation and exportation or immediate exportation entry; and, the failure to maintain intact seals or the unauthorized removal of seals, as provided in such bond. Appropriate commercial or government documentation may be provided to CBP as proof of delivery and/or exportation. When sealing is waived, any loss found to exist at the port of destination or port of export will be presumed to have occurred while the merchandise was in the possession of the party whose bond was obligated under the transportation entry, unless conclusive evidence to the contrary is produced.

(b) *Liquidated damages.* (1) The party described in paragraph (a) of this section that fails to comply with any of the requirements found at Part 18 of this chapter or any of the other conditions specified in the bond is liable for payment of liquidated damages.

(2) *Petition for relief.* In any case in which liquidated damages are imposed in accordance with this section and CBP is satisfied by the evidence submitted with a petition for relief filed in accordance with the provisions of part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, CBP may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

(c) *Taxes, duties, fees, and charges.* In addition to the liquidated damages described in paragraph (b) of this section, the party whose bond is obligated on the transportation entry will be liable for any duties, taxes, and fees accruing to the United States on the missing merchandise, together with all costs, charges, and expenses, caused by the failure to make the required

transportation, report, delivery, entry and/or exportation.

(d) *Carnets*—(1) *TIR carnets.* (i) The domestic guaranteeing association will be jointly and severally liable with the initial bonded carrier for duties, taxes, and fees accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to $50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages against the initial bonded carrier, and sums assessed against the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery will be in accordance with this section. If a TIR carnet has not been discharged or has been discharged subject to a reservation, the guaranteeing association will be notified within 1 year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge was obtained improperly or fraudulently the period will be 2 years. However, in cases that become the subject of legal proceedings during the above-mentioned period, no claim for payment will be made more than 1 year after the date when the decision of the court becomes enforceable.

(ii) Within 3 months from the date demand for payment is made by the port director as provided by § 18.6(e), the guaranteeing association must pay the amount claimed, except that if the amount claimed exceeds the liability of the guaranteeing association under the carnet (see § 114.22(d) of this chapter), the carrier must pay the excess. The amount paid will be refunded if, within a period of 1 year from the date on which the claim for payment was made, it is established to the satisfaction of the Commissioner of CBP that no irregularity occurred. CBP may cancel liquidated damages assessed against the guaranteeing association to the extent authorized by paragraph (c) of this section.

(2) *A.T.A. or TECRO/AIT carnets.* The domestic guaranteeing association is jointly and severally liable with the initial bonded carrier for pecuniary penalties, liquidated damages, duties, fees, and taxes accruing to the United States and any other charges imposed as the result of any shortage, irregular delivery, failure to comply with sealing requirements in this part, and any non-delivery at the port of destination or port of exit of merchandise covered by an A.T.A. or TECRO/AIT carnet. However, the liability of the guaranteeing association must not exceed the amount of the import duties by more than 10 percent. If an A.T.A. or TECRO/AIT carnet is unconditionally discharged with respect to certain goods, the guaranteeing association will no longer be liable on the carnet with respect to those goods unless it is subsequently discovered that the discharge of the carnet was obtained fraudulently or improperly or that there has been a breach of the conditions of temporary admission or of transit. No claim for payment will be made more than one year following the date of expiration of the validity of the carnet. The guaranteeing association will be allowed a period of six months from the date of any claim by the port director in which to furnish proof of the reexportation of the goods or of any other proper discharge of the A.T.A. or TECRO/AIT carnet. If such proof is not furnished within the time specified, the guaranteeing association must either deposit or provisionally pay the sums. The deposit or payment will become final three months after the date of the deposit or payment, during which time the guaranteeing association may still furnish proof of the reexportation of the goods to recover the sums deposited or paid.

§ 18.9 New in-bond movement for forwarded or returned merchandise.

The carrier or any of the parties named in § 18.1(c) must, in accordance with the filing requirements of § 18.1, submit a new in-bond application in order to forward or return merchandise from the port of destination or port of export named in the original in-bond application, or from the port of diversion, to any another port. If the merchandise is moving under cover of a carnet, the carnet may be accepted as a transportation entry.

§ 18.10 Special manifest.

(a) *General.* Merchandise for which no other type of bonded movement is appropriate (e.g., prematurely discharged or overcarried merchandise and other such types of movements whereby the normal transportation-in-bond procedures are not applicable) may be shipped in-bond from the port of unlading to the port of destination, port of export or port of diversion where applicable, upon approval by CBP.

(b) *Filing requirements.* The carrier or any of the parties named in § 18.1(c) may, in accordance with the filing requirements of § 18.1, submit an in-bond application, requesting permission to transport the merchandise in-bond as a special manifest. Authorization for the movement of merchandise will be transmitted via a CBP-approved EDI system. The party submitting the in-bond application must identify the relevant merchandise and also identify the date and entry number of any entry made at the destination port covering the merchandise to be returned, if known. For diversion of cargo, see §§ 4.33, 4.34, and 18.5 of this chapter. When no entry is identified, the port director may approve the shipment pursuant to this section.

Subpart B—Immediate Transportation Without Appraisement

§ 18.11 General rules.

(a) *Delivery outside port limits.* (1) Merchandise covered by an entry for immediate transportation, including a carnet, or a manifest of baggage shipped in-bond (other than baggage to be forwarded in-bond to a CBP station—see § 18.13(a)), may be delivered to a place outside a port of entry for examination and release as contemplated by section 484(f), Tariff Act of 1930, as amended (19 U.S.C. 1484(c)), with the approval of CBP.

(2) The carrier or any of the parties named in § 18.1(c) must request, via a CBP-approved EDI system, permission to transport the merchandise in-bond. Before permission will be granted by CBP, the importer must stipulate in the in-bond application that within 24 hours after the arrival of any part of the merchandise or baggage to a place outside the port of entry, the importer will file an entry for the shipment and will comply with the provisions of § 151.9 of this chapter. Authorization for the movement of merchandise will be transmitted via a CBP-approved EDI system.

(b) *Split shipments.* One or more entire packages of merchandise covered by an invoice from one consignor to one consignee may be entered for consumption or warehouse at the port of first arrival, and the remainder entered for immediate transportation, provided that all of the merchandise covered by the invoice is entered and any carnet which may cover such merchandise is discharged as to that merchandise.

(c) *Consolidated loads and combined shipments.* Several importations may be consolidated into one immediate transportation entry when bills of lading or carrier's certificates name only one consignee at the port of first arrival. However, merchandise moving under cover of a carnet may not be consolidated with other merchandise.

§ 18.12 Entry at port of destination.

(a) *Arrival procedures.* Merchandise received under an immediate transportation entry at the port of destination may be entered for transportation and exportation, immediate exportation, or for immediate transportation, or under a FTZ admission, or any other form of entry, and is subject to all the conditions pertaining to merchandise entered at a port of first arrival.

(b) *Entry.* The right to make entry at the port of destination will be determined in accordance with the provisions of § 141.11 of this chapter.

(c) *Entry at subsequent ports.* When a portion of a shipment is entered at the port of first arrival and the remainder of the shipment is entered for consumption or warehouse at one or more subsequent ports, the entry at each subsequent port may be made on an extract of the invoice as provided for in § 141.84 of this chapter.

(d) *General order merchandise.* All merchandise included in a transportation appraisement entry (including carnets) must be entered pursuant to § 18.12(a), within 15 calendar days from the date of arrival at the port of destination. On the 16th day, the merchandise will become subject to general order requirements pursuant to §§ 4.37, 122.50, or 123.10 of this chapter, as applicable.

Subpart C—Shipment of Baggage In-Bond

§ 18.13 Procedure; manifest.

(a) *In-bond application required.* Baggage may be forwarded in-bond to another port of entry, or to a Customs station listed in § 101.4 of this chapter without examination or assessment of duty at the port or station of first arrival at the request of the passenger, the transportation company, or the agent of either, by filing an in-bond application in accordance with the provisions of § 18.1.

(b) *Coast to coast transportation.* Baggage arriving in-bond or otherwise at a port on the Atlantic or Pacific coast, destined to a port on the opposite coast, may be laden under CBP supervision, without examination and without being placed in-bond, on a vessel proceeding to the opposite coast, provided the vessel will proceed to the opposite coast without stopping at any other port on the first coast.

§ 18.14 Shipment of baggage in transit to foreign countries.

The baggage of any person in transit through the United States from one foreign country to another may be shipped over a bonded route for exportation. Such baggage must be shipped under the regulations prescribed in § 18.13. See § 123.64 of this chapter for the regulations applicable to baggage shipped in transit through the United States between points in Canada or Mexico.

Subpart D—Transportation & Exportation

§ 18.20 General rules.

(a) *Classes of goods for which a transportation and exportation entry is authorized.* Entry for transportation and exportation may be made under section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553), for any merchandise, except as provided under § 18.1(l).

(b) *Filing Requirement.* Transportation and exportation entries must be filed via a CBP-approved EDI system and in accordance with § 18.1.

(c) *Entry Procedures.* Except as provided for in subparts D, E, F and G of part 123 of this chapter (relating to merchandise in transit through the U.S. between two points in contiguous foreign territory), when merchandise is entered for transportation and exportation, a carnet, three copies of an air waybill (see § 122.92 of this chapter), or the in-bond application must be submitted to CBP (see § 18.1). The port director may require the carrier to provide additional information and documentation related to the delivery of the merchandise to the bonded carrier. Arrival must be reported promptly, but no later than 24 hours after the arrival at the port of exportation, in accordance with § 18.1.

(d) *No bonded common carrier facilities available.* Except for merchandise covered by a carnet (see § 18.2(a) (2) and (3)), in places where no bonded common carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the port director may permit entry in accordance with the procedures outlined in this section if he or she is satisfied that the revenue will not be endangered. A bond on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount equal to double the estimated duties that would be owed will be required when the port director deems such action necessary. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

(e) *Electronic Export Information.* Filing of Electronic Export Information (EEI) is not required for merchandise entered for transportation and exportation, provided the merchandise has not been entered for consumption or for warehousing. If the merchandise requires an export license, the merchandise is subject to the filing requirements of the licensing Federal agency. See 15 CFR 30.37(e).

(f) *Time to export.* Any portion of an in-bond shipment entered for exportation following an in-bond entry must be exported within 15 calendar days from the date of arrival to the port of export, unless an extension has been granted by CBP pursuant to § 18.24. On the 16th day, the merchandise will become subject to general order requirements under §§ 4.37, 122.50, or 123.10 of this chapter, as applicable.

(g) *Notice and Proof of Exportation.* The bonded carrier must promptly, but no more than 24 hours after exportation, update the in-bond record via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

§ 18.21 [Reserved].

§ 18.22 Transfer and express shipment procedures at port of exportation.

(a) *Transfer of bonded merchandise to another conveyance.* If in-bond merchandise must be transferred to another conveyance, the procedure will be as prescribed in § 18.3(d).

(b) *Transfer of baggage by express shipment.* An express company that is bonded as a common carrier and is responsible under its bond for delivery to the CBP officer in charge of the exporting conveyance of articles shown to be baggage in the in-bond record may transfer the baggage by express shipment without a permit from the port director and without the use of a transfer ticket or other CBP formality from its terminal to the exporting conveyance for lading under CBP supervision. The in-bond record must be updated to reflect the name of the owner of the baggage or article and the name of the conveyance transporting the owner of the baggage. See § 18.1.

§ 18.23 Change of foreign destination; change of entry.

(a) The carrier or any of the parties provided for in § 18.1(c) must notify CBP of a change of the foreign destination that was provided in the original in-bond application by updating the in-bond record via a CBP-

approved EDI system within 24 hours of learning of the change.

(b) Merchandise received at the anticipated port of export may be entered for consumption, warehouse, FTZ or any other form of entry, and is subject to all the conditions pertaining to merchandise entered at a port of first arrival.

§ 18.24 Retention of goods within port limits; splitting of shipments.

(a) *Retention of goods within port limits.* Upon application via a CBP-approved EDI system by the carrier or any of the parties provided for in § 18.1(c), the port director, in his or her discretion, may allow in-transit merchandise, including merchandise covered by a carnet, to remain within the port limits under CBP supervision without extra expense to the Government for a period not exceeding 90 days, provided that the owner of the premises where the merchandise is located, has consented to the retention of the goods on the owner's premises. Upon obtaining CBP approval, the carrier or any of the parties provided for in § 18.1(c) must submit an immediate exportation in-bond application pursuant to §§ 18.1 and 18.25 of this chapter. Upon further requests, additional extensions of 90 days or less may be granted by the port director, but the merchandise may not remain in the port limits for more than 1 year from the date of arrival of the importing conveyance at the port of first arrival. Any merchandise that remains in the port limits without authorization is subject to general order requirements under §§ 4.37, 122.50, or 123.10 of this chapter, as applicable.

(b) *Split shipments.* The splitting up of a shipment for exportation will be permitted when exportation in its entirety is not possible by reason of the different destination to which portions of the shipment are destined, when the exporting vessel cannot properly accommodate the entire quantity, or in similar circumstances. The carrier or any of the parties named in § 18.1(c) must, in accordance with the filing requirements of § 18.1, submit a new in-bond application for each portion of the original shipment to be transported in a manner inconsistent with the original in-bond application. All movements of split shipment must be initiated within two days from the date that the first portion of the split shipment is authorized or it will be considered an irregular delivery. In the case, however, of merchandise being transported under cover of a carnet, the splitting up of a shipment is not permitted.

Subpart E—Immediate Exportation

§ 18.25 Direct exportation.

(a) *Merchandise*—(1) *General.* Except for exportations by mail as provided for in subpart F of part 145 of this chapter (see also § 158.45 of this chapter), an in-bond application must be transmitted as provided under § 18.1, for the following merchandise when it is to be directly exported without transportation to another port:

(i) Merchandise in CBP custody for which no entry has been made or completed;

(ii) Merchandise covered by an unliquidated consumption entry; or

(iii) Merchandise that has been entered in good faith but is found to be prohibited under any law of the United States.

(2) *Carnets.* If a TIR carnet covers the merchandise that is to be exported directly without transportation, the carnet will be discharged or canceled, as appropriate (see part 114 of this chapter), and an in-bond application must be transmitted, as provided by this part. If an A.T.A. carnet covers the merchandise that is to be exported directly without transportation, the carnet must be discharged by the certification of the appropriate transportation and reexportation vouchers by CBP officers as necessary.

(b) *Restriction on immediate export by truck.* Trucks arriving at a United States port of entry, carrying shipments for which an immediate exportation entry is presented as the sole means of entry will be denied a permit to proceed. The port director may require the truck to return to the country from which it came or, at the discretion of the port director, may allow the filing of a new entry.

(c) *Time to export.* Any portion of an in-bond shipment entered for immediate exportation pursuant to an in-bond entry must be exported within 15 calendar days from the date of arrival to the port of export, unless an extension has been granted by CBP pursuant to § 18.24. On the 16th day, the merchandise will become subject to general order requirements under §§ 4.37, 122.50, or 123.10 of this chapter, as applicable.

(d) *Electronic Export Information.* Filing of Electronic Export Information (EEI) is not required for merchandise entered under an Immediate Exportation entry provided that the merchandise has not been entered for consumption or for warehousing. If the merchandise requires an export license, the merchandise is subject to the filing requirements of the licensing Federal agency. See 15 CFR 30.37(e).

(e) *Exportation without landing.* If the merchandise is exported in the arriving carrier without landing, a representative of the exporting carrier who has knowledge of the facts must certify that the merchandise entered for exportation was not discharged during the carrier's stay in port. A charge will be made against the continuous bond on CBP Form 301, containing the bond conditions set forth in § 113.64 of this chapter, if on file. If a continuous bond is not on file, a single entry bond containing the bond conditions set forth in § 113.64 will be required as in the case of residue cargo for foreign ports. If the merchandise is covered by a TIR carnet, the carnet must not be taken on charge (see § 114.22(c)(2) of this chapter).

(f) *Notice and Proof of Exportation.* The bonded carrier must promptly, but no more than 24 hours after exportation, update the in-bond record via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation

(g) *Explosives.* Gunpowder and other explosive substances, the deposit of which in any public store or bonded warehouse is prohibited by law, may be entered on arrival from a foreign port for immediate exportation in-bond by sea, but must be transferred directly from the importing to the exporting vessel.

(h) *Transfer by Express Shipment.* The transfer of articles by express shipment must be in accordance with the procedures set forth in § 18.22.

§ 18.26 Indirect exportation.

(a) *Merchandise exported without landing from importing carrier.* Merchandise to be exported in the importing carrier without landing, commonly referred to as freight remaining on board (FROB), may be transported in-bond to another port for exportation and entered for transportation and exportation in accordance with the procedure in § 18.20, upon the transmission of an in-bond application to CBP pursuant to § 18.1, via a CBP-approved EDI system. Upon acceptance of the entry by CBP and acceptance of the merchandise by the bonded carrier, the bonded carrier assumes liability for the transportation and exportation of the merchandise. If the merchandise was prohibited entry by any Government agency, that fact must be noted in the in-bond application.

(b) *Carnets.* If the merchandise was imported under cover of a TIR carnet, the carnet must be discharged or canceled at the port of importation and the merchandise transported under an electronic in-bond application (see § 18.25). If merchandise has been imported under cover of an A.T.A. carnet to be transported in-bond to another port for exportation, the appropriate transit voucher will be accepted in lieu of an electronic in-bond application. One transit voucher will be certified by CBP officers at the port of importation and a second transit voucher, together with the reexportation voucher, will be certified at the port of exportation.

(c) *Transfer at selected port of exportation.* If the merchandise is to be transferred to another conveyance after arrival at the port selected for exportation pursuant to paragraph (a) of this section, the procedure prescribed in § 18.3(d) will be followed. The provisions of §§ 18.23 and 18.24 will also be followed in applicable cases.

(d) *Time to export.* Any portion of an in-bond shipment entered for immediate exportation following an in-bond entry must be exported within 15 calendar days from the date of arrival to the port of export, unless an extension has been granted by CBP pursuant to § 18.24. On the 16th day, the merchandise will become subject to general order requirements under §§ 4.37, 122.50, or 123.10 of this chapter, as applicable.

(e) Notice and Proof of Exportation. The bonded carrier must promptly, but no more than 24 hours after exportation, update the in-bond record via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportations in accordance with § 113.55 of this chapter within 30 days of exportation.

§ 18.27 Port marks.

Port marks may be added by authority of the port director and under the supervision of a CBP officer. The original marks and the port marks must appear in all documentation pertaining to the exportation.

Subpart F—Merchandise Transported by Pipeline

§ 18.31 Pipeline transportation of bonded merchandise.

(a)(1) *General.* Merchandise may be transported by pipeline under the procedures in this part, as appropriate, and unless otherwise specifically provided for in this section.

(2) *In-bond application.* For purposes of this section, the in-bond application will be made by submitting a CBP Form 7512.

(b) *Bill of lading to account for merchandise.* Unless CBP has reasonable cause to suspect fraud, CBP will accept a bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper and accepted by the consignee to account for the quantity of merchandise transported by pipeline and to maintain the identity of the merchandise.

(c) *Procedures when pipeline is only carrier.* When a pipeline is the only carrier of the in-bond merchandise and there is no transfer to another carrier, the bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper must be submitted with the in-bond application. If there are no discrepancies between the bill of lading or equivalent document of receipt and the in-bond application for the merchandise, and provided that CBP has no reasonable cause to suspect fraud, the bill of lading or equivalent document of receipt will be accepted by CBP at the port of destination or exportation as establishing the quantity and identity of the merchandise transported. The pipeline operator is responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries at the port of destination or exportation (see § 18.8).

(d) *Procedures when there is more than one carrier (i.e., transfer of the merchandise)*—(1) *Pipeline as initial carrier.* When a pipeline is the initial carrier of merchandise to be transported in-bond and the merchandise is transferred to another conveyance (either a different mode of transportation or a pipeline operated by another operator), the procedures in § 18.3 and paragraph (c) of this section must be followed, except that—

(i) When the merchandise is to be transferred to one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper must be delivered to the person in charge of the conveyance for delivery to the appropriate CBP official at the port of destination or export; or

(ii) When the merchandise is to be transferred to more than one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper must be delivered to the person in charge of each additional conveyance, for delivery to the appropriate CBP official at the port of destination or exportation.

(2) *Transfer to pipeline from initial carrier other than a pipeline.* When merchandise initially transported in-bond by a carrier other than a pipeline is transferred to a pipeline, the procedures in § 18.3 and paragraph (c) of this section must be followed, except that the bill of lading or other equivalent document of receipt issued by the pipeline operator to the shipper must be delivered to the appropriate CBP officer at the port of destination or port of export.

(3) *Initial carrier liable for discrepancies.* In the case of either paragraph (d)(1) or (d)(2) of this section, the initial carrier will be responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries, at the port of destination or failure to export at the port of exportation (see generally § 18.8).

(e) *Recordkeeping.* The shipper, pipeline operator, and consignee are subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 162 of this chapter.

Subpart G—Merchandise Not Otherwise Subject to Customs Control Exported Under Cover of a TIR Carnet

§ 18.41 Applicability.

The provisions of §§ 18.41 through 18.45 apply only to merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest and do not apply to merchandise otherwise required to be transported in bond under the provisions of this chapter. Merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest may be transported with the use of the facilities of either bonded or nonbonded carriers.

§ 18.42 Direct exportation.

At the port of exportation, the container or road vehicle, the merchandise, and the TIR carnet shall be made available to the port director. Any required export declarations shall be filed in accordance with the applicable regulations of the Bureau of the Census (15 CFR part 30) and the Export Administration (15 CFR chapter VII, subchapter C). The port director shall examine the merchandise to the extent he believes necessary to determine that the carnet has been properly completed and shall verify that the container or road vehicle has the necessary certificate of approval or approval plate intact and is in satisfactory condition. After completion of any required examination and

supervision of loading, the port director will seal the container or road vehicle with customs seals and ascertain that the TIR plates are properly affixed and sealed. See § 18.4(d). In the case of heavy or bulky goods moving under cover of a TIR carnet, the port director shall cause a customs seal or label, as appropriate, to be affixed. He shall also remove two vouchers from the carnet, execute the appropriate counterfoils, and return the carnet to the carrier or agent to accompany the merchandise.

§ 18.43 Indirect exportation.

(a) *Filing of Electronic Export Information.* When merchandise is to move from one U.S. port to another for actual exportation at the second port, any export declarations required to be validated shall be filed in accordance with the port of origin procedure described in the applicable regulations of the Bureau of the Census (15 CFR part 30) and the Export Administration (15 CFR chapter VII, subchapter C).

(b) *Origination port procedure.* The port director shall follow the procedure provided in § 18.42 in respect to examination of the merchandise, supervision of loading, sealing or labeling, and affixing of TIR plates. The port director will remove one voucher from the carnet, execute the appropriate counterfoil, and return the carnet to the carrier or agent to accompany the container or road vehicle to the port of actual exportation.

(c) *Port of export procedure.* At the port of actual exportation, the carnet and the container (or heavy or bulky goods) or road vehicle shall be presented to the port director who shall verify that seals or labels are intact and that there is no evidence of tampering. After verification, the port director shall remove the appropriate voucher from the carnet, execute the counterfoil, and return the carnet to the carrier or agent.

§ 18.44 Abandonment of exportation.

In the event that exportation is abandoned at any time after merchandise has been placed under cover of a TIR carnet, the carrier or agent shall deliver the carnet to the nearest CBP office or to the CBP office at the port of origin for cancellation (see § 114.26(c) of this chapter). When the carnet has been canceled, the carrier or agent may remove customs seals or labels and unload the container (or heavy or bulky goods) or road vehicle without customs supervision.

§ 18.45 Supervision of exportation.

The provisions of §§ 18.41 through 18.44 do not require the director of the port of actual exportation to verify that merchandise moving under cover of a TIR carnet is loaded on board the exporting carrier.

Subpart H—Importer Security Filings

§ 18.46 Changes to Importer Security Filing information.

For merchandise transported in bond, which at the time of transmission of the Importer Security Filing as required by § 149.2 of this chapter is intended to be entered as an immediate exportation (IE) or transportation and exportation (T&E) shipment, permission from the port director of the port of origin is needed to change the in-bond entry into a consumption entry. Such permission will only be granted upon receipt by CBP of a complete Importer Security Filing as required by part 149 of this chapter.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

9. The general authority for part 19, CBP regulations continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

* * * * *

10. In § 19.15, revise paragraphs (f) and (g)(1) to read as follows:

§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

* * * * *

(f) The general procedure covering warehouse withdrawals for exportation must be followed in the case of articles withdrawn for exportation from a bonded manufacturing warehouse.

(g)(1) Articles may be withdrawn for transportation and delivery to a bonded storage warehouse at an exterior port under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), for the sole purpose of immediate export, except for distilled spirits which may be withdrawn under the provisions of section 311 for transportation and delivery to any bonded storage warehouse for the sole purpose of immediate export, or may be withdrawn pursuant to § 309(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(a)). To make a withdrawal an in-bond application must be filed (see part 18 of this chapter), as provided for in § 144.36 of this chapter. A rewarehouse entry shall be made in accordance with § 144.34(b) of this chapter, supported by a bond on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

* * * * *

PART 113—CUSTOMS BONDS

11. The general authority for part 113, CBP regulations continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

12. In § 113.63, revise paragraph (c)(1) to read as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(c) * * *

(1) If a bonded carrier, to report in-bond arrivals and exportations in the manner and in the time prescribed by regulation and to export in-bond merchandise in the time periods prescribed by regulation.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

13. The general authority for part 122, CBP regulations continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

14. In § 122.118, revise (b) to read as follows:

§ 122.118 Exportation from port of arrival.

* * * * *

(b) *Time.* Transit air cargo must be exported from the port of arrival within 15 days from the date the exporting airline receives the cargo. After the 15-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

* * * * *

15. In § 122.119, revise paragraph (b) to read as follows:

§ 122.119 Transportation to another U.S. port.

* * * * *

(b) *Time.* Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 30 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

16. In § 122.120, revise paragraphs (c) and (k) to read as follows:

§ 122.120 Transportation to another port for exportation.

* * * * *

(c) *Time.* Transit air cargo covered by this section shall be delivered to Customs at the port of exportation

within 30 days from the date of receipt by the forwarding airline.

* * * * *

(k) *Failure to deliver.* If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 45 days, the director of the port of arrival shall take action as provided in § 122.119(d).

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

17. The general authority for part 123, CBP regulations continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

18. In § 123.31, revise paragraph (b) to read as follows:

§ 123.31 Merchandise in transit.

* * * * *

(b) *From one point in a contiguous country to another through the United States.* Merchandise may be transported from point to point in Canada or in Mexico through the United States in bond in accordance with the procedures set forth in §§ 18.1 and 18.20 through 18.24 of this chapter except where those procedures are modified by this subpart or subparts E for trucks transiting the United States, F for commercial traveler's samples, or G for baggage.

* * * * *

19. Revise § 123.32 to read as follows:

§ 123.32 In-bond application.

An in-bond application must be submitted pursuant to part 18 of this chapter upon arrival of merchandise which is to proceed under the provisions of this subpart.

§ 123.34 [Removed and Reserved]

20. Remove and reserve § 123.34.

21. In § 123.42, revise paragraph (c)(1) and the introductory text of paragraph (d), to read as follows:

§ 123.42 Truck shipments transiting the United States.

* * * * *

(c) *Procedure at United States port of arrival*—(1) *Filing of in-bond application.* An in-bond application must be filed pursuant to § 18.1 of this chapter prior to or upon arrival at a U.S. port. At CBP's discretion the driver may be required to present four validated copies of the United States-Canada Transit Manifest, CBP Form 7512–B Canada 81/2, to the CBP officer, who will review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by CBP. The CBP officer will note in the in-bond record and, if paper, on the manifest, the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest to the driver for presentation to CBP at the United States port of exit.

* * *

(d) *Procedure at United States port of exit.* The arrival of the in-bond shipment at the port of export must be reported to CBP in accordance with § 18.1 of this chapter. If CBP requires a paper manifest, the driver will present the three validated copies of the manifest to the CBP officer at the U.S. port of exit.

* * * * *

22. Revise § 123.52 (a) to read as follows:

§ 123.52 Commercial samples transported by automobile through the United States between ports in Canada.

(a) *General provisions.* A commercial traveler arriving from Canada may be permitted to transport effectively corded and sealed samples in his automobile without further sealing in the United States, upon compliance with this section and subject to the conditions of § 18.20(c) of this chapter, since customs bonded carriers as described in § 18.2 of this chapter are not considered to be reasonably available. Samples having a total value of not more than $200 may be carried by a nonresident commercial traveler through the United States without cording and sealing and without an in-transit manifest in accordance with § 148.41 of this chapter.

* * * * *

23. Revise § 123.64(a) to read as follows:

§ 123.64 Baggage in transit through the United States between ports in Canada or in Mexico.

(a) *Procedure.* Baggage in transit from point to point in Canada or Mexico through the United States may be transported in-bond through the United States in accordance with the procedures set forth in §§ 18.1, 18.13, 18.14, and 18.20 through 18.24 of this chapter except where those procedures are modified by this section.

* * * * *

PART 141—ENTRY OF MERCHANDISE

24. The general authority for part 141, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1414, 1448, 1484, 1624.

25. In § 141.61, revise paragraph (e)(1)(i)(A) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

* * * * *

(e) *Statistical information*—(1) *Information required on entry summary or withdrawal form*—(i) *Where form provides space*—(A) *Single invoice.* For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Notes, Harmonized Tariff Schedule of the United States (HTSUS), must be shown on the entry summary, CBP Form 7501. The applicable information must also be shown on the in-bond application filed pursuant to part 18 of this chapter when it is used to document an incoming vessel shipment proceeding to a third country pursuant to an entry for transportation and exportation, or immediate exportation.

* * * * *

PART 142—ENTRY PROCESS

26. The general authority for part 142, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

27. In § 142.18, revise paragraphs (a)(1) and (2) to read as follows:

§ 142.18 Entry summary not required for prohibited merchandise.

(a) * * *

(1) An entry for exportation filed using an in-bond application pursuant to part 18 of this chapter, or an application to destroy the merchandise under CBP supervision is made within 10 days after the time of entry, and the exportation or destruction is accomplished promptly, or

(2) An entry for transportation and exportation, filed using an in-bond application pursuant to part 18 of this chapter, is made within 10 days after the time of entry and domestic carriage of the merchandise does not conflict with the requirements of another Federal agency.

* * * * *

28. In § 142.28, revise paragraph (a)(2) to read as follows:

§ 142.28 Withdrawal or entry summary not required for prohibited merchandise.

(a) * * *

(2) An entry for exportation or for transportation and exportation filed using an in-bond application pursuant to part 18 of this chapter, or an application to destroy the merchandise, is made within the specified time limit, and the exportation or destruction is accomplished promptly.

* * * * *

PART 143—SPECIAL ENTRY PROCEDURES

29. The general authority for part 143, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1414, 1481, 1484, 1498, 1624, 1641.

30. In § 143.1, revise paragraph (c) to read as follows:

§ 143.1 Eligibility.

* * * * *

(c) *Participants for other purposes.* Upon approval by CBP, any party may participate in ABI for other purposes, including transmission of protests, and applications for FTZ admission (CBP Form 214).

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

31. The general authority for part 144, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

32. In § 144.22, revise paragraph (b) to read as follows:

§ 144.22 Endorsement of transfer on withdrawal form.

* * * * *

(b) In-bond application filed pursuant to part 18 of this chapter, for merchandise to be withdrawn for transportation, exportation, or transportation and exportation.

33. In § 144.36, revise paragraph (c), the introductory text of paragraph (d), paragraph (f), and paragraph (g)(4) to read as follows:

§ 144.36 Withdrawal for transportation.

* * * * *

(c) *Form.* (1) A withdrawal for transportation shall be filed by submitting an in-bond application pursuant to part 18 of this chapter.

(2) Separate withdrawals for transportation from a single warehouse, via a single conveyance, consigned to the same consignee, and deposited into a single warehouse, can be filed using one in-bond application, under one control number, provided that the information for each withdrawal, as required in paragraph (d) of this section is provided in the in-bond application for certification by CBP. With the exception of alcohol and tobacco products, this procedure will not be allowed for merchandise that is in any way restricted (for example, quota/visa).

(3) The requirement that an in-bond application be filed and the information required in paragraph (d) of this section be shown will not be required if the merchandise qualifies under the exemption in § 144.34(c).

(d) *Information required.* In addition to the statement of quantity required by § 144.32, the following information for the merchandise being withdrawn must be provided in the in-bond application:

* * * * *

(f) *Forwarding procedure.* The merchandise must be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1 through 18.9 of this chapter). However, when the alternate procedures for transfers between integrated bonded warehouses under § 144.34(c) are employed, the merchandise need not be delivered to a bonded carrier for transportation, and an entry for transportation and a rewarehouse entry will not be required.

* * * * *

(g) * * *

(4) Forwarded to another port or returned to the port of origin in accordance with §§ 18.5(c) or 18.9 of this chapter;

* * * * *

34. In § 144.37, revise paragraphs (a) and (b), to read as follows:

§ 144.37 Withdrawal for exportation.

(a) *Form.* A withdrawal for either direct or indirect exportation must be filed by submitting an in-bond application pursuant to part 18 of this chapter or on CBP Form 7501 in 3 copies for merchandise being exported under cover of a TIR carnet. The in-bond application or CBP Form 7501 must contain all of the statistical information as provided in § 141.61(e) of this chapter. The port director may require an extra copy or copies of CBP Form 7501 for use in connection with the delivery of merchandise to the carrier.

(b) *Procedure for indirect exportation*—(1) *Forwarding.* Merchandise withdrawn for indirect exportation (transportation and exportation) must be forwarded to the port of exportation in accordance with the general provisions for transportation in bond (part 18 of this chapter).

(2) *Splitting of shipments.* The splitting up for exportation of shipments arriving under warehouse withdrawals for indirect exportation will be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. In the case of merchandise moving under cover of a TIR carnet, if the merchandise is not to be exported or if the shipment is to be divided, appropriate entry will be required and the carnet discharged. The provisions of §§ 18.23 and 18.24 of this chapter concerning change of destination or retention of merchandise on the deck must also be followed in applicable cases.

* * * * *

PART 146—FOREIGN TRADE ZONES

35. The general authority for part 146, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

36. In § 146.62, revise paragraphs (a) and (b)(2) to read as follows:

§ 146.62 Entry.

(a) *General.* Entry for foreign merchandise that is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made filing an in-bond application pursuant to part 18 of this chapter, CBP Form 3461, CBP Form 7501, or other applicable CBP forms. If entry is made on CBP Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the CBP Form 3461 within 10 working days after the time of entry.

(b) * * *

(2) An in-bond application for merchandise to be transferred to another port or zone or for exportation must provide that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

* * * * *

37. In § 146.66, revise paragraphs (a) and (b), and remove the words "Customs Form" and adding in their place the words "CBP Form" in paragraphs (c) and (d) to read as follows:

§ 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a

different operator at the same port (including a consolidated port) must be made by a licensed cartman or a bonded carrier as provided for in § 112.2(b) of this chapter or by the operator of the zone for which the merchandise is destined under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter or other appropriate form with a CBP Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CBP Form 6043 or under a local control system approved by the port director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port must be made by bonded carrier under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

* * * * *

38. In § 146.67, revise paragraphs (b) and (c) to read as follows:

§ 146.67 Transfer of merchandise for exportation.

* * * * *

(b) *Immediate exportation.* Each transfer of merchandise to the customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation filed in an in-bond application pursuant to part 18 of this chapter. The person making entry must furnish an export bond on CBP Form 301 containing the bond conditions provided for in § 113.63 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation in an in-bond application pursuant to part 18 of this chapter. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

* * * * *

39. Revise § 146.68 to read as follows:

§ 146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The port director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be made by filing an in-bond application pursuant to part 18 of this chapter. The in-bond application must provide invoice or schedule information like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry must file a supplemental in-bond application to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the port director.

(b) *Individual entries.* After approval of the application for a weekly permit by the port director, the person making entry will be authorized to file individual in-bond applications for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the carrier must update the in-bond record via a CBP-approved system to ensure its assumption of liability under the carrier's or cartman's bond. CBP will consider the time of entry to be when the removing carrier updates the in-bond record.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit must file with the port director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each in-bond application by its unique IT number, and must provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual in-bond applications submitted to CBP, as well as an explanation of any discrepancy.

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

40. The general authority for part 151, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

41. Revise § 151.9 to read as follows:

§ 151.9 Immediate transportation entry delivered outside port limits.

When merchandise covered by an immediate transportation entry has been authorized by the port director to be delivered to a place outside a port of entry as provided for in § 18.11(a) of this chapter, the provisions of § 151.7 must be complied with to the same extent as if the merchandise had been delivered to the port of entry, and then authorized to be examined elsewhere than at the public stores, wharf, or other place under the control of CBP.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

42. The general authority for part 181, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

* * * * *

§ 181.47 [Amended]

43. In § 181.47, revise paragraph (b)(2)(ii)(E) by removing the words "Customs Form 7512" and replacing them with the words "In-bond application submitted pursuant to part 18 of this chapter".

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: February 2, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012–2819 Filed 2–21–12; 8:45 am]

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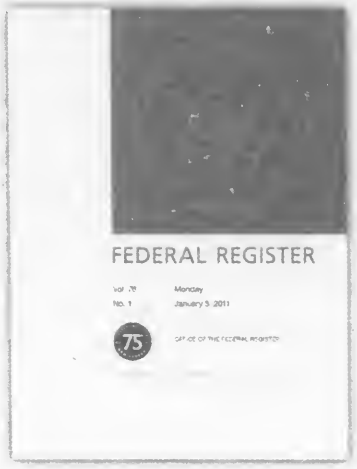

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