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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

7 CFR Part 2

RIN 0503–AA48

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics (REE) and the Under Secretary for Rural Development (RD), and from the Under Secretary for REE to the Director of the National Institute of Food and Agriculture (NIFA), to reflect the division of responsibilities for carrying out the biomass research and development authorities in section 9008 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8108).

DATES: *Effective Date:* August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Chavonda Jacobs-Young; Acting Director, NIFA, REE, USDA at (202) 720–4423 or William F. Hagy, Director of Alternative Energy Policy, RD, USDA, at (202) 720–4581.

SUPPLEMENTARY INFORMATION: This final rule revises the delegations of authority within the Department of Agriculture to carry out the various authorities of the Secretary of Agriculture in section 9008 of FSRIA (formerly the Biomass Research and Development Act of 2000) (7 U.S.C. 8108), as added by section 9001(a) of the Food, Conservation, and Energy Act of 2008, Public Law 110–246.

Currently, the authority to carry out section 9008 of FSRIA is delegated to the Under Secretary for REE, as reflected in 7 CFR 2.21(a)(1)(cci). The authority to administer the grants program known as the Biomass Research and Development Initiative (7 U.S.C. 8108(e)) is further delegated to the Director of NIFA within the REE mission area, as reflected in 7 CFR 2.66(a)(156).

This final rule divides responsibilities for carrying out section 9008 of FSRIA between the REE and RD mission areas, as follows. The Under Secretary for REE will continue to exercise delegated authority to administer the Biomass Research and Development Initiative program, as well as consult and coordinate, as appropriate, with the Under Secretary for RD and other mission areas of the Department as necessary in carrying out this authority. These authorities are further delegated to the Director of NIFA. The delegations in 7 CFR 2.21(a)(1)(cci) and 2.66(a)(156) are revised accordingly.

The Under Secretary for RD is delegated the responsibility to carry out all other authorities of the Secretary in 7 U.S.C. 8108, including administration of the Biomass Research and Development Board and Biomass Research and Development Technical Advisory Committee, and submission of reports to Congress. The Under Secretary for RD will consult and coordinate, as appropriate, with the Under Secretary for REE and other mission areas of the Department in carrying out these authorities. A new delegation is added to 7 CFR 2.17(a)(30) to reflect the delegation of these authorities.

Finally, the Under Secretary for RD will serve as the designated "point of contact" referenced in 7 U.S.C. 8108 for the Department, except that the point of contact for purposes of administering the Biomass Research and Development Initiative program will continue to be the Under Secretary for REE.

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** This rule also is exempt from the provisions of Executive Orders 12866 and 12988. This action is not a rule as defined by the Regulatory Flexibility Act, Public Law 96–354, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.*, and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries, and Assistant Secretaries for Congressional Relations and Administration

■ 2. Amend § 2.17 by adding a new paragraph (a)(30) to read as follows:

§ 2.17 Under Secretary for Rural Development.

(a) * * *

(30) *Related to biomass research and development.*

Administer section 9008 of FSRIA (7 U.S.C. 8108) with respect to biomass research and development, including administration of the Biomass Research and Development Board and Biomass Research and Development Technical Advisory Committee, and submission of reports to Congress, except for the authority delegated to the Under Secretary for REE in § 2.21(a)(1)(cci) to carry out the Biomass Research and Development Initiative; consult and coordinate, as appropriate, with the Under Secretary for REE and other mission areas within the Department as deemed necessary in carrying out the authorities delegated herein; and serve as the designated point of contact referenced in 7 U.S.C. 8108 for the Department, except for purposes of administering the Biomass Research and Development Initiative as provided in § 2.21(a)(1)(cci).

* * * * *

■ 3. Amend § 2.21 by revising paragraph (a)(1)(cci) to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(cci) Administer the Biomass Research and Development Initiative (7 U.S.C. 8108(e)); consult and coordinate, as appropriate, with the Under Secretary for RD and other mission areas of the Department as deemed necessary in carrying the authorities delegated herein; serve as the designated point of contact referenced in 7 U.S.C. 8108 for the Department for purposes of administering the Biomass Research and Development Initiative.

* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

■ 4. Amend § 2.66 by revising paragraph (a)(156) to read as follows:

§ 2.66 Director, National Institute of Food and Agriculture.

(a) * * *

(156) Administer the Biomass Research and Development Initiative (7 U.S.C. 8108(e)); consult and coordinate, as appropriate, with the Under Secretary for Rural Development and other mission areas of the Department as deemed necessary in carrying out the authorities delegated herein.

* * * * *

Signed in Washington, DC, on August 18, 2011.

Pearlie S. Reed,

Assistant Secretary of Agriculture for Administration.

[FR Doc. 2011–21597 Filed 8–23–11; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2007–BT–STD–0010]

RIN 1904–AA89

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: In a direct final rule published on April 21, 2011, the U.S. Department of Energy (DOE) adopted amended energy conservation standards for residential clothes dryers and room air conditioners. As required by the Energy Policy and Conservation Act (EPCA), DOE also published simultaneously a notice of proposed rulemaking (NOPR) that proposed identical energy efficiency standards. The standards set forth in the direct final rule and NOPR were identical to the standards provided in the consensus agreement that served as the basis for those rulemaking actions. The consensus agreement also provided specific compliance dates for both products. In the direct final rule and NOPR, however, DOE provided for a compliance date 3 years after the date of publication in the **Federal Register**, or April 21, 2014. As such, the compliance date of the direct final rule and NOPR did not correspond with the consensus agreement. DOE now amends the compliance dates set forth in the direct final rule and corresponding NOPR to be consistent with the compliance dates set out in the consensus agreement. Elsewhere in today's **Federal Register**, DOE also published a document confirming adoption of the standards set forth in the direct final rule and confirming the effective date of the direct final rule.

DATES: *Effective Date:* This rule is effective on August 24, 2011. *Compliance dates:* Compliance with the standards for room air conditioners is required on June 1, 2014. Compliance with the standards for residential clothes dryers is required on January 1, 2015.

ADDRESSES: The docket is available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. Not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7463, e-mail: *stephen.witkowski@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7796, e-mail: *Elizabeth.Kohl@hq.doe.gov.*

For further information on how to submit or review public comments or view hard copies of the docket, contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE published a direct final rule to establish amended energy conservation standards for residential clothes dryers and room air conditioners on April 21, 2011. 76 FR 22454 (April 21, 2011).

EPCA (42 U.S.C. 6291 *et seq.*), as amended, grants DOE authority to issue a final rule (hereinafter referred to as a "direct final rule") establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary, that contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). EPCA also requires a NOPR that proposes an identical energy conservation standard to be published simultaneously with the final rule. A public comment period of at least 110 days must be provided. 42 U.S.C. 6295(p)(4). Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published notice of proposed rulemaking. DOE must publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

During the rulemaking proceeding to develop amended standards for residential clothes dryers and room air conditioners, DOE received the "Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances" (the "Joint Petition"), a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung,

Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC)) (collectively, the "Joint Petitioners"). This collective set of comments, which DOE refers to in this notice as the "Joint Petition" [1] or "Consensus Agreement" recommends specific energy conservation standards for residential clothes dryers and room air conditioners that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). The Joint Petition also sets forth compliance dates for these recommended standards. The compliance dates are June 1, 2014 for room air conditioners and January 1, 2015 for clothes dryers.

As discussed in the direct final rule, DOE determined that the relevant criteria under 42 U.S.C. 6295(p)(4) were satisfied and that it was appropriate to adopt amended energy conservation standards for clothes dryers and room air conditioners through the direct final rule. In publishing the direct final rule, however, DOE inadvertently specified a compliance date 3 years after publication of the direct final rule in the **Federal Register**, rather than specifying the compliance dates set forth in the Joint Petition. DOE proposed to amend the compliance dates in a proposed rule published in the **Federal Register** on May 9, 2011. 76 FR 26656. DOE received two comments in support of the amended compliance dates, and no commenters objected to those dates. In today's rule, DOE adopts those compliance dates. Specifically, for room air conditioners, DOE adopts a compliance date of June 1, 2014, and for clothes dryers, DOE adopts a compliance date of January 1, 2015. In addition, elsewhere in today's **Federal Register**, DOE published a document confirming adoption of the standards set forth in the direct final rule and announcing the effective date of the direct final rule.

Procedural Issues and Regulatory Review

DOE finds good cause to waive the 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. 553(d)). A 30-day delay is unnecessary because the compliance dates established in today's final rule are intended merely to ensure that the compliance dates for the energy conservation standards set forth in DOE's direct final rule published on April 21, 2011 are the same as those recommended in the Joint Petition. Further, as DOE also published a document elsewhere in today's **Federal Register** confirming adoption of the standards set forth in the direct final rule and announcing the effective date of the direct final rule, any delay in the effective date of this rule could cause confusion among interested parties.

The regulatory reviews conducted for this final rule remain unchanged from those conducted for the direct final rule establishing the amended energy conservation standards. DOE does not believe that the changes in the compliance dates—approximately one and a half months for room air conditioners and eight and a half months for clothes dryers—would result in changes to those analyses. Please see the direct final rule for further details.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements, Small businesses.

Issued in Washington, DC, on August 18, 2011.

Timothy Unruh,

Program Manager, Federal Energy Management Program, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. In § 430.32, revise paragraphs (b) and (h) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(b) *Room air conditioners.*

Product class	Energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014	Combined energy efficiency ratio, effective as of June 1, 2014
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	9.7	11.0
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	9.7	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.8	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	9.7	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 24,999 Btu/h	8.5	9.4
5b. Without reverse cycle, with louvered sides, and 25,000 Btu/h or more	.....	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	9.0	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	9.0	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	8.5	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	.....	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.5	9.4
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.0	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	8.5	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.0	8.7
15. Casement-Only	8.7	9.5

[1] DOE Docket No. EERE–2007–BT–STD–0010, Comment 35.

Product class	Energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014	Combined energy efficiency ratio, effective as of June 1, 2014
16. Casement-Slider	9.5	10.4

* * * * *

(h) *Clothes dryers.* (1) Gas clothes dryers manufactured after January 1, 1988 shall not be equipped with a constant burning pilot.

(2) Clothes dryers manufactured on or after May 14, 1994 and before January 1, 2015, shall have an energy factor no less than:

Product class	Energy factor (lbs/kWh)
i. Electric, Standard (4.4 ft^3 or greater capacity)	3.01
ii. Electric, Compact (120V) (less than 4.4 ft^3 capacity)	3.13
iii. Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.90
iv. Gas	2.67

(3) Clothes dryers manufactured on or after January 1, 2015, shall have a combined energy factor no less than:

Product class	Combined energy factor (lbs/kWh)
i. Vented Electric, Standard (4.4 ft^3 or greater capacity)	3.73
ii. Vented Electric, Compact (120V) (less than 4.4 ft^3 capacity)	3.61
iii. Vented Electric, Compact (240V) (less than 4.4 ft^3 capacity)	3.27
iv. Vented Gas	3.30
v. Ventless Electric, Compact (240V) (less than 4.4 ft^3 capacity)	2.55
vi. Ventless Electric, Combination Washer-Dryer	2.08

* * * * *

[FR Doc. 2011–21639 Filed 8–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2007–BT–STD–0010]

RIN 1904–AA89

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of effective date and compliance dates for direct final rule.

SUMMARY: DOE published a direct final rule to establish amended energy conservation standards for residential clothes dryers and room air conditioners in the **Federal Register** on April 21, 2011. DOE has determined that the adverse comments received in response to the direct final rule do not provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this document confirming adoption of the energy conservation standards established in the direct final rule and announcing the effective date of those standards. DOE also published a proposed rule to amend the compliance dates set forth in the direct final rule on May 9, 2011. Elsewhere in today's **Federal Register**, DOE publishes a final rule which adopts the compliance dates set forth in its proposed rule published on May 9, 2011.

DATES: The direct final rule published on April 21, 2011 (76 FR 22454) was effective on August 19, 2011. Pursuant to the document published elsewhere in today's **Federal Register**, compliance with the standards in the direct final rule will be required on June 1, 2014 for room air conditioners and on January 1, 2015 for clothes dryers.

ADDRESSES: The docket is available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. Not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. A link to the docket Web page can be found at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121; telephone: (202) 586–7463; e-mail: *Stephen.Witkowski@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121; telephone: (202) 586–7796; e-mail: *Elizabeth.Kohl@hq.doe.gov.*

For further information on how to submit or review public comments or view hard copies of the docket, contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority and Rulemaking Background

As amended by Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110–140), the Energy Policy and Conservation Act authorizes DOE to issue a direct final rule establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary of Energy (Secretary), that contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). A notice of proposed rulemaking (NOPR) that proposes an identical energy conservation standard must be published simultaneously with the final rule, and DOE must provide a public comment period of at least 110 days on the direct final rule. 42 U.S.C. 6295(p)(4). Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable

law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published NOPR. DOE must publish in the **Federal Register** the reasons why the direct final rule was withdrawn. *Id.*

During the rulemaking proceeding to consider amending energy conservation standards for residential clothes dryers and room air conditioners, DOE received the "Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances" (the "Joint Petition" or "Consensus Agreement"), a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U–Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC)) (collectively, the "Joint Petitioners"). This collective set of comments [1] recommends specific energy conservation standards for residential clothes dryers and room air conditioners that, in the commenters' view, would satisfy the EPCA requirements at 42 U.S.C. 6295(o).

After careful consideration of the Consensus Agreement, the Secretary determined that it was submitted by interested persons who are fairly representative of relevant points of view on this matter. DOE noted in the direct final rule that Congress provided some guidance within the statute itself by specifying that representatives of manufacturers of covered products, States, and efficiency advocates are relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated above, the Consensus Agreement was signed and submitted by a broad cross-section of the manufacturers who produce the subject products, their trade associations, and environmental, energy efficiency and consumer advocacy organizations. Although States were not signatories to the Consensus Agreement, they did not express any opposition to it from the time of its submission to DOE through the close of the comment period on the direct final rule. Moreover, DOE stated in the direct final rule that it does not interpret the statute as requiring absolute agreement among all interested parties before DOE may proceed with issuance of a direct final rule. By explicit language of the statute, the Secretary has discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.*, "as determined by the Secretary"). Accordingly, DOE determined that the Consensus Agreement was made and submitted by interested persons fairly representative of relevant points of view.

Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly submitted recommendation for an energy or water conservation standard is in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. As stated in the direct final rule, this determination is exactly the type of analysis DOE conducts whenever it considers potential energy conservation standards pursuant to EPCA. DOE applies the same principles to any consensus recommendations it may receive to satisfy its statutory obligation to ensure that any energy conservation standard that it adopts achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of energy. Upon review, the Secretary determined that the Consensus Agreement submitted in the instant rulemaking comports with the standard-setting criteria set forth under 42 U.S.C. 6295(o). Accordingly, the Consensus Agreement levels, included as trial standard level (TSL) 4 for both clothes dryers and room air conditioners, were adopted as the amended standard levels in the direct final rule.

In sum, as the relevant statutory criteria were satisfied, the Secretary adopted the amended energy conservation standards for clothes dryers and room air conditioners set forth in the direct final rule. These standards are set forth in Table 1. The standards apply to all products listed in Table 1 that are manufactured in, or imported into, the United States on or after June 1, 2014 for room air conditioners and on or after January 1, 2015 for clothes dryers. These compliance dates were set forth in the proposed rule issued on May 9, 2011 (76 FR 19913) and are adopted in a final rule published elsewhere in today's **Federal Register** (*see* section V of this notice for further details.) For a detailed discussion of DOE's analysis of the benefits and burdens of the amended standards pursuant to the criteria set forth in EPCA, please see the direct final rule. (76 FR 22454 (April 21, 2011))

As required by EPCA, DOE also simultaneously published a NOPR proposing the identical standard levels contained in the direct final rule. As discussed in section II.A.4 of this notice, DOE considered whether any comment received during the 110-day comment period following the direct final rule was sufficiently "adverse" as to provide a reasonable basis for withdrawal of the direct final rule and continuation of this rulemaking under the NOPR. As noted in the direct final rule, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, DOE weighs the substance of any adverse comment(s) received against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule.

[1] DOE Docket No. EERE–2007–BT–STD–0010, Comment 35.

TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES DRYERS AND ROOM AIR CONDITIONERS

Product class	Minimum CEF levels * lb/kWh
Residential Clothes Dryers	
1. Vented Electric, Standard (4.4 ft³ or greater capacity)	3.73
2. Vented Electric, Compact (120 V) (less than 4.4 ft³ capacity)	3.61
3. Vented Electric, Compact (240 V) (less than 4.4 ft³ capacity)	3.27
4. Vented Gas	3.30
5. Ventless Electric, Compact (240 V) (less than 4.4 ft³ capacity)	2.55
6. Ventless Electric Combination Washer/Dryer	2.08

Product class	Minimum CEER levels ** Btu/Wh
Room Air Conditioners	
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	11.0
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 24,999 Btu/h	9.4
5b. Without reverse cycle, with louvered sides, and 25,000 Btu/h or more	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	9.4
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.7
15. Casement-only	9.5
16. Casement-slider	10.4

* CEF (Combined Energy Factor) is calculated as the clothes dryer test load weight in pounds divided by the sum of "active mode" per-cycle energy use and "inactive mode" per-cycle energy use in kWh.

** CEER (Combined Energy Efficiency Ratio) is calculated as capacity times active mode hours (equal to 750) divided by the sum of active mode annual energy use and inactive mode.

II. Comments Requesting Withdrawal of the Direct Final Rule

A. General Comments

1. Joint Petition

Commenters stated that DOE did not consider the views of all relevant parties, including appliance installers and energy suppliers. Commenters also stated that DOE did not explain its process for determining whether the Joint Petition was submitted by relevant parties, including a determination of which parties are "not" relevant. (American Gas Association (AGA), No. 62 at pp. 4–5; [2] AGL Resources (AGL), No. 63 at p. 8; American Public Gas Association (APGA), No. 61 at p. 2)

As explained above, EPCA authorizes DOE to issue a direct final rule establishing an energy conservation standard on receipt of a statement that, in relevant part, is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary. While providing some guidance by specifying that representatives of manufacturers of covered products, States, and efficiency advocates are relevant parties to any consensus recommendation, EPCA affords DOE significant discretion in determining whether this requirement has been met. (42 U.S.C. 6295(p)(4)(A)) DOE notes that EPCA does not require that "all" relevant parties be parties to any consensus agreement. EPCA also does not require DOE to specify parties that it determines are not relevant to any consensus agreement.

In the direct final rule, DOE explained how the Consensus Agreement met the requirement that it be submitted jointly by interested persons that are fairly representative of relevant points of view. DOE noted that the Consensus Agreement was signed and submitted by a broad cross-section of the manufacturers who produce the subject products, their trade associations, and environmental, energy efficiency and consumer advocacy organizations. DOE further noted that although States were not signatories to the Consensus Agreement, they did not express any opposition to it. States also did not file any adverse comments during the comment period for the direct final rule.

Moreover, DOE stated in the direct final rule that it does not interpret the statute as requiring absolute agreement among all interested parties before DOE may proceed with issuance of a direct final rule. By explicit language of the statute, the Secretary has discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.*,

[2] A notation in the form "AGA, No. 62 at pp. 4–5" identifies a written comment (1) Made by the American Gas Association (AGA), (2) recorded in document number 62 that is filed in the docket of this rulemaking, and (3) which appears on pages 4–5 of document number 62.

"as determined by the Secretary"). DOE acknowledges that appliance installers and energy suppliers may also be relevant parties within the meaning of 42 U.S.C. 6295(p)(4), but does not believe that the existence of other potentially relevant parties indicates that the Consensus Agreement was not submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates). In addition, DOE notes that it derived the installation costs for the clothes dryers from the 2010 *RS Means Residential Cost Data,* which is commonly used as an installation cost reference source by the installers for estimating the labor hours and regional labor cost. DOE also notes that the clothes dryer design that meets the new energy conservation standard does not require additional installation cost compared to the models that meet the existing energy conservation standard. Energy suppliers—Edison Electric Institute and California Utilities (gas and electric)—provided technology information that could improve the products' efficiency, and also recommended improvements to the existing test procedures in response to the framework document for this rulemaking, made available for comment on October 9, 2007, and the preliminary analysis document, made available for public comment on February 23, 2010.[3]

For the reasons stated above, DOE affirms its conclusion in the direct final rule that the Joint Petition satisfies the requirement of 42 U.S.C. 6295(p)(4) that it be a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary.

2. Using Experience Curve To Forecast Product Prices

AGA objected to DOE's use of a learning curve to forecast product prices. (AGA, No. 62 at p. 3) APGA stated that learning curve price reductions should not be included in this direct final rule because DOE's most recent policy on this topic, set forth in DOE's notice of data availability (NODA) on Equipment Price Forecasting in Energy Conservation Standards Analysis (76 FR 9696, Feb. 22, 2011), has not been finalized. (APGA, No. 61 at p. 2)

APGA also presented as relevant to this rulemaking several issues that it had raised in its comments in response to the NODA. Summarizing these issues, AGA stated that DOE has not justified use of "learning curve" price effects with respect to the covered products, and that the price adjustment approach, based on a wide variety of products and not specific to the design options under consideration, is inconsistent with the approach of using engineering costs. (AGA, No. 62 at p. 3) Laclede Gas Company (Laclede Gas) stated that the "learning curve" is one of many assumptions made by DOE leading to a biased outcome. (Laclede Gas, No. 59 at p. 4)

In the NODA, DOE stated that when data are available to project potential cost reductions over time for a particular appliance or type of equipment, DOE plans to use these data as part of its analyses. 76 FR 9699 (Feb. 22, 2011). Therefore, use of the experience curve approach in the direct final rule, as described below, is appropriate.

For the direct final rule, DOE examined historical producer price indices for room air conditioners and household laundry equipment and found a long-term declining real price trend for both products. Consistent with the method proposed in the NODA, DOE used experience curve fits with the historical data on prices and cumulative production to forecast product costs. The experience curve approach captures a variety of factors that together shaped the observed historical trends, and is consistent with the costing approach in the engineering analysis, which estimated the incremental costs of considered design options in 2010. DOE did not attempt to forecast how those costs may change in the future because the available data did not permit DOE to estimate how only the incremental costs of design options may change.

3. Measure of Energy Consumption

Laclede Gas expressed concern that DOE has not implemented the National Academy of Sciences (NAS) conclusions that DOE's measurement of energy use should be based on full-fuel cycles, which takes into account the amount of energy consumed and lost from the fuel's production through the final point of use. (Laclede Gas, No. 59 at p. 4)

As discussed in the direct final rule, Section 1802 of the Energy Policy Act of 2005 directed DOE to contract a study with the National Academy of Science (NAS) to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual point-of-use or through the use of the full-fuel-cycle, beginning at the source of energy production. (Pub. L. 109–58 (August 8, 2005)). NAS appointed a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" to conduct the study, which was completed in May 2009. The NAS committee noted that DOE uses what the committee referred to as "extended site" energy consumption to assess the impact of energy use on the economy, energy security, and environmental quality. The extended site measure of energy consumption includes the energy consumed during the generation, transmission, and distribution of electricity but, unlike the full-fuel-cycle measure, does not include the energy consumed in extracting, processing, and transporting primary fuels. A majority of the NAS committee concluded that extended site energy consumption understates the total energy consumed to make an appliance operational at the site. As a result, the NAS committee recommended that DOE consider shifting its analytical approach over time to use a full-fuel-cycle measure of energy consumption when assessing national and environmental impacts, especially with respect to the calculation of greenhouse gas emissions.

In response to the NAS committee recommendations, DOE issued a Notice of Proposed Policy proposing to incorporate a full-fuel cycle analysis into the methods it uses to estimate the likely impacts of energy conservation standards on energy use and emissions. 75 FR 51423 (August 20, 2010). Specifically, DOE proposed to use full-fuel-cycle (FFC) measures of energy and greenhouse gas (GHG) emissions, rather than the primary (extended site) energy measures it currently uses. DOE recently published a final policy statement on these subjects (76 FR 51281, August 18, 2011) and will take steps to begin implementing that policy in future rulemakings and other activities.

4. Adverse Impacts

Commenters stated that DOE did not consider the adverse comments consistent with 42 U.S.C. 6295(p)(4). Specifically, commenters asserted that DOE was required to weigh adverse comments independent of other aspects of the direct final rule, except where the comments conflict with DOE's analysis in the rule, to avoid what the commenters view as *ad hoc* and administratively inappropriate trade-offs. Commenters also asserted that

[3] A notice of availability (NOA) of the framework document was published in the **Federal Register** on October 9, 2007. (72 FR 57254). A NOA of the preliminary analysis was published in the **Federal Register** on Feb. 23, 2010. (75 FR 7987).

weighing the adverse comments against the benefits of the direct final rule was not authorized by EPCA. (AGA, No. 62 at p. 4; APGA, No. 61 at p. 2)

EPCA, in relevant part, authorizes DOE to adopt in a direct final rule jointly recommended energy conservation standards that are in accordance with the provisions of 42 U.S.C. 6295(o). Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary is required to determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law.

In the discussion that follows, DOE first explains its rationale for establishing the standards set forth in the direct final rule. DOE then explains the process for determining whether adverse comments received may provide a reasonable basis for withdrawal of the direct final rule and addresses commenters' concerns about that process.

As stated in the direct final rule, DOE's determination as to whether the standards levels in a consensus agreement meet the requirements for adoption set forth in 42 U.S.C. 6295(o) is exactly the type of analysis DOE conducts whenever it considers potential energy conservation standards pursuant to EPCA. DOE applies the same principles to any consensus recommendations it may receive to satisfy its statutory obligation to ensure that any energy conservation standard that DOE adopts achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of energy. This analysis includes a determination of whether the benefits of the standard outweigh its burdens, considering, to the maximum extent practicable, the seven criteria set forth in EPCA. These factors include the economic impact on manufacturers and consumers, operating cost savings compared to any increase costs, energy savings, any lessening of utility, the impact of any lessening of competition, the need for national energy and water savings, and any other factors that the Secretary considers appropriate. For the reasons stated in the direct final rule, DOE stated that it considered submission of the Consensus Agreement as another such factor. Upon review, and for the reasons set forth in the direct final rule, the Secretary determined that the Consensus Agreement submitted for residential clothes dryers and room air conditioners comports with the standard-setting criteria set forth under 42 U.S.C. 6295(o). Accordingly, the consensus agreement levels, included as TSL 4 for both clothes dryers and room air conditioners, were adopted as the amended standard levels in the direct final rule.

In considering whether any comment received on the direct final rule is sufficiently "adverse" such that it may provide a reasonable basis for withdrawal of the direct final rule and continuation of this rulemaking under the NOPR, DOE stated in the direct final rule that it is the substance, rather than the quantity, of comments that ultimately determines whether a direct final rule will be withdrawn. DOE also stated that it weighs the substance of any adverse comment(s) received against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE noted that to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule. DOE does not agree that adverse comments must be weighed independently of the benefits of the standards in the direct final rule. DOE notes that EPCA affords the Secretary significant discretion in determining whether adverse comments may provide a reasonable basis for withdrawal of the direct final rule. EPCA requires DOE to make its decision whether to withdraw the direct final rule "based on the rulemaking record relating to the direct final rule." In addition, DOE believes that weighing the substance of any adverse comments against the benefits of the standards adopted in the direct final rule is authorized by, and completely consistent with, EPCA because EPCA requires DOE to make these same types of determinations, weighing factors as varied as impacts to consumers and manufacturers and the need of the nation for energy savings, when deciding whether a standard is economically justified. DOE also believes that analysis of the substance of the adverse comments to determine whether further consideration would lead to a change in the results of the rulemaking, as well as the consideration of comments already addressed as insufficient to justify withdrawal, is an appropriate exercise of the Secretary's discretion and use of limited resources. DOE's analysis of the adverse comments received is provided throughout this section.

5. Comment Period

Commenters also suggested that DOE extend the comment period on the NOPR published simultaneous with the direct final rule. In the commenters' view, DOE needs to deliberate on the comments advocating withdrawal before closing the comment period on the NOPR so that stakeholders are aware of the rulemaking path DOE is pursuing. Commenters also noted that there is no requirement for the comment periods to have the same end date, and that withdrawal of the direct final rule may generate unique information for stakeholders to inform their comments on the NOPR. (AGA, No. 62 at p. 5; APGA, No. 61 at p. 3)

DOE is required by 42 U.S.C. 6295(p)(4) to publish a NOPR proposing standards identical to those set forth in the direct final rule simultaneously with the direct final rule. DOE published the direct final rule and corresponding NOPR on April 21, 2011. (76 FR 22324 (NOPR); 76 FR 22454 (direct final rule)) DOE is not required to provide for identical comments periods on the NOPR and direct final rule. DOE typically provides for a 60-day comment period on an energy conservation standards NOPR. For the NOPR proposing energy conservation standards for residential clothes dryers and room air conditioners, however, DOE provided for a longer comment period to match the 110-day comment period provided for the direct final rule. DOE believed that an earlier closing date could be confusing to commenters and was not warranted given that the direct final rule provided for a 110-day comment period. DOE does not believe that further extension of the comment period on the NOPR is necessary. The time provided for DOE to deliberate on whether to withdraw the direct final rule is specified in EPCA, which states that not later than 120 days after publication of the direct final rule in the **Federal Register** (*i.e.*, 10 days after the close of the comment period), DOE must withdraw the direct final rule if it receives one or more adverse comments that may provide a reasonable basis for withdrawal. In addition, the standards proposed in the NOPR are identical to those set forth in the direct final rule, and in the event DOE determines that withdrawal is warranted, EPCA requires DOE to proceed with the simultaneously published NOPR. DOE's path in the event of withdrawal is therefore known when the direct final rule and NOPR are published—DOE considers the comments received and determines

whether to issue amended standards in a final rule. Because the standards proposed in the NOPR, and the analyses by which those standards were developed, are identical to those in the direct final rule, DOE would not expect that withdrawal would generate unique information to inform stakeholders' comments on the NOPR.

B. Comments on Standards for Clothes Dryers

1. Consumer Benefits and Economic Justification

AGA, APGA, and AGL stated that the results of DOE's consumer impact analysis do not provide sufficient economic justification for TSL 4 for gas clothes dryers. They stated that the average life-cycle cost (LCC) benefit of $2 is highly questionable as a positive economic justification, and that at TSL 4 more consumers would experience a net cost than would experience an LCC benefit. They also stated that the mean payback period for TSL 4 is much longer than the median payback period reported in the direct final rule. (AGA, No. 62 at p. 2; AGL, No. 63 at p. 2; APGA, No. 61 at pp. 1–2)

DOE reports median payback period because it is a better indicator of consumer impacts than mean payback period, which can be skewed by a small number of consumers with a larger payback period. For gas clothes dryers at TSL 4, the average LCC savings are estimated at $2. Sixty-eight percent of consumers will experience either a net benefit or no cost (*i.e.*, LCC decrease or no change in LCC) in 2014, while approximately one-third of consumers would experience a net cost (*i.e.*, LCC increase) in 2014. DOE considered these LCC impacts in the direct final rule in its analysis of the seven factors that EPCA directs DOE to evaluate in determining whether a potential energy conservation standard is economically justified (42 U.S.C. 6295(o)(2)(B)(i)). In the direct final rule, DOE concluded that at TSL 4 for residential clothes dryers, the benefits of energy savings, generating capacity reductions, emission reductions and the estimated monetary value of the CO_2 emissions reductions, and positive NPV of consumer benefits outweigh the economic burden on some consumers due to the increases in product cost and the profit margin impacts that could result in a reduction in industry net present value for the manufacturers. Thus, the Secretary concluded that TSL 4 offers the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy.

AGA noted inconsistencies between DOE's LCC analysis and its recalculated values using the same analytical tools that would change the LCC savings into a cost. AGA stated that without any changes to the user inputs or other variables, it ran the simulation with the Crystal Ball software and calculated a $7 average LCC cost for gas dryers at TSL 4, making the adopted standard for gas dryers not economically justifiable. (AGA, No. 62 at pp. 1–2) In reviewing the LCC spreadsheet for gas clothes dryers, DOE consistently reproduced the results for the gas dryers at TSL 4 as reported in the technical support document (TSD) (*i.e.*, an average savings of $2) using MS Excel 2007 and Crystal Ball software version 7.3.2. (2009). The different outcome from AGA's simulation runs could be due to different software versions, different initial settings for Crystal Ball, or other factors, though the information provided by AGA was insufficient for DOE to determine the cause of the differences.

2. Fuel Choice and Fuel Switching

Laclede Gas stated that because the direct final rule presents energy efficiency ratings for clothes dryers based on site energy, it misleads consumers into thinking that electric resistance heat is more efficient than the direct use of natural gas for clothes drying. (Laclede Gas, No. 59 at pp. 2–3) The units in which DOE expresses energy conservation standards for appliances are based on the definitions of "energy efficiency" and "energy use" provided by EPCA. The term "energy efficiency" means the ratio of the useful output of services from a consumer product to the energy use of such product, determined in accordance with applicable test procedures, and the term "energy use" means the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures. (42 U.S.C. 6291(4–5)) DOE acknowledges that the energy conservation standards in the direct final rule are higher for standard vented electric dryers than for vented gas dryers (3.73 CEF vs. 3.30 CEF, respectively), but DOE does not find it credible that this fact would lead consumers to thereby prefer electric dryers. While clothes dryers do not have EnergyGuide labels, any such label would feature the estimated annual operating cost, not the energy efficiency rating. The estimated average annual operating cost of a gas dryer meeting the amended standard is less than the similar cost for an electric dryer meeting the amended standard, so it is implausible to expect that the standards would lead consumers to prefer electric dryers over gas dryers.

In a related comment, Laclede Gas stated that DOE ignored the potential for fuel switching from gas to electric clothes drying. (Laclede Gas, No. 59 at p. 4) DOE did not consider switching between gas and electric clothes dryers as a result of the standards because the average incremental cost of the standards for standard-size gas and electric clothes dryers is approximately the same ($13). Thus, DOE believes that the standards would be unlikely to induce fuel switching, particularly given the additional costs associated with such switching (*e.g.*, the need to install a new dedicated electrical outlet).

3. Energy Price Forecast

AGA stated that DOE's use of the *Annual Energy Outlook* (*AEO*) 2010 Reference Case for energy prices under-accounts for the expansion of the U.S. natural gas resource base resulting from technological innovations for production of gas from tight shales. AGA recommended that DOE conduct its analysis using the *AEO* Low Growth price scenario. (AGA, No. 62 at p. 4) DOE traditionally uses the Reference Case forecast from the most recent *AEO* available at the time of the analysis for its default energy price forecast, and conducts sensitivity analysis using the Low Growth and High Growth Cases. For this rulemaking, the 2010 *AEO* was the most recent available forecast.

4. Employment Impacts

AGA, APGA, and Laclede Gas stated that DOE's estimated range of impacts under TSL 4 for direct domestic employment in the manufacture of gas dryers indicates that job loss is the more likely outcome of the standards. (AGA, No. 62 at pp. 2–3; APGA, No. 61 at p. 1; Laclede Gas, No. 59 at p. 4)

The results for clothes dryers under TSL 4 in the direct final rule show impacts ranging from a gain of 460 jobs to a potential loss of 3,962 jobs. The potential loss reflects a scenario in which all existing production would be moved outside of the United States. DOE believes that this outcome is unlikely for the reasons stated in the direct final rule. Specifically, at TSL 3 through TSL 5, DOE analyzed design options for the most common clothes dryer product classes that would add labor content to the final product. If manufacturers continue to produce these more complex products in-house, it is likely that employment would

increase in response to the amended energy conservation standards. At TSL 3 through TSL 5, gains in domestic production employment are likely because, while requiring more labor, the necessary changes could be made within existing product platforms. The ability to make product changes within existing platforms mitigates some of the pressure to find lower labor costs, as relocating manufacturing facilities would disrupt production and add significant capital costs.

5. Scientific Integrity

Laclede Gas stated that the energy factors established for clothes dryers do not fulfill the scientific integrity objectives established by the President's Memorandum on scientific integrity, published on May 9, 2009,[4] and that there is no scientific integrity in mandating standards that unfairly discriminate against the direct use of natural gas. (Laclede Gas, No. 59 at p. 2)

DOE notes that the President's memo requires the Director of the Office of Science and Technology Policy (OSTP) to develop recommendations for Presidential action designed to guarantee scientific integrity throughout the executive branch based on the principles enumerated in the memorandum. DOE further notes that OSTP issued a memorandum to the heads of executive departments and agencies on December 17, 2010 pursuant to the President's May 9, 2009 memorandum (*http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf*). The memorandum provides guidance to agencies to implement the Administration's policies on scientific integrity. The OSTP memo stated that agencies should develop policies[5] that, among other things, strengthen the actual and perceived credibility of Government research, which would include ensuring that data and research used to support policy decisions undergo independent peer review by qualified experts, where feasible and appropriate. Agency policies should also, among other things, establish principles for conveying scientific and technological information to the public.

As stated in the direct final rule, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report" dated February 2007 has been disseminated and is available at the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.* DOE also makes its analyses and results available to the public in the TSD developed for its energy conservation standards rulemakings. The TSD for the direct final rule to establish energy conservation standards for residential clothes dryers and room air conditioners is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/residential_clothes_dryers_room_ac_direct_final_rule_tsd.html.*

DOE further notes that both memoranda state explicitly that they are not intended to create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, agents or any other person.

Lastly, DOE disagrees with the commenter's assertion that the amended standards for clothes dryers unfairly discriminate against the direct use of natural gas. As discussed in section II.B.2 of this notice, DOE finds no reason to expect that the standards will cause consumers to prefer electric dryers over gas clothes dryers.

III. Other Comments on the Direct Final Rule

A. Standby Power Levels

AHAM commented that the energy conservation standards for residential clothes dryers adopted in the direct final rule incorporate 0.08 Watts (W) of standby power for the vented clothes dryer product classes. AHAM stated that this standby power level is low and requested that DOE provide additional information on how that level was determined. AHAM indicated that approximately 1–2 W of standby power is required to power electronic controls and provide consumers with the usability they expect. AHAM provided the example of the product's central processing unit (CPU), which it stated must run while the product is not in active mode and that the touch pad must remain active. AHAM added that without those two elements a hard off switch would be required and, as a result, the consumer would be required to wait for the product to power up at the start of use. AHAM stated that consumers are not likely to accept such a wait time to turn on the product. (AHAM, No. 60 at p. 2)

As noted in chapter 5 of the direct final rule TSD, the standby power levels for clothes dryers (including the 0.08 W standby power level) were developed based on DOE testing and reversing engineering analysis of products in its test sample. The 0.08 W standby power level corresponds to a clothes dryer with electronic controls that uses a conventional linear power supply, along with a transformerless power supply that enables the CPU to remain on at all times while disabling the main linear power supply whenever the clothes dryer is "asleep" (after periods of user inactivity). This power supply design, incorporated with a "soft" power pushbutton and triac to control power through the transformer, would provide just enough power through the transformerless power supply to maintain the microcontroller chip while the clothes dryer is not powered on. The control logic monitors the clothes dryer for key-presses, door openings, etc., and when user activity is detected, the logic activates the main linear power supply to power the remainder of the control board. DOE notes that this design option and standby power level was observed in DOE's sample of units that were tested and reverse-engineered for the preliminary analyses. As a result, DOE believes that products incorporating this design option are currently available on the market and do not require a hard on/off switch. In addition, DOE is unaware of any differences in the time required to power up the controls using this power supply design versus a conventional linear power supply or switch mode power supply that also power down the display after a period of user inactivity. For these reasons, DOE believes that the standby power level analyzed and adopted in the direct final rule for vented dryer product classes is appropriate.

AHAM also commented that DOE did not indicate what standby power levels were incorporated into the energy conservation standards adopted in the direct final rule for room air conditioners. As a result, AHAM stated it was unable to comment on the appropriateness of the adopted standard levels. (AHAM, No. 60 at p. 2) DOE has

[4] *http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/.*

[5] DOE has submitted its draft policy to OSTP. *See http://www.whitehouse.gov/blog/2011/08/11/scientific-integrity-policies-submitted-ostp.*

provided additional information on the standby power levels incorporated into the standards adopted in the direct final rule for room air conditioners that can be found on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/room_ac_efficiency_level_standby_table.pdf.*

B. Test Procedure

The same parties that submitted the Joint Petition also submitted a separate comment (Joint Comment) which supported the final adoption of the standards in the direct final rule, but also noted that DOE's revised clothes dryer test procedure that published in January 2011 did not incorporate their recommendations to amend the test procedure to better account for the effectiveness of automatic termination controls. 76 FR 972 (Jan. 6, 2011) As part of this recommendation, the Joint Comment stated that DOE should revise its test procedure to measure the energy use of automatic termination controls so that the procedure includes the entire cycle, including the cool-down period. The Joint Comment stated that it intends to submit new data gathered by manufacturers along with a petition requesting a revision to the DOE test procedure to account for the effectiveness of automatic termination controls and include the full cycle, including cool-down. The petition will also request a parallel revision to the energy conservation standard to reflect the test procedure change, as required by EPCA. The Joint Comment added that amending the test procedure to capture the energy use of the entire dryer cycle could save significant amounts of energy over 30 years and urged DOE to act upon their upcoming petition as soon as possible. (Joint Comment, No. 64 at p. 1)

As noted in the clothes dryer test procedure request for information (RFI) notice issued on August 9, 2011 and published in the **Federal Register** on August 12, 2011 (76 FR 50145–48), DOE has initiated a new test procedure rulemaking for clothes dryers to further investigate the effects of automatic cycle termination on the energy efficiency. In the RFI, DOE stated that it seeks information, data, and comments regarding methods for more accurately measuring the effects of automatic cycle termination in its clothes dryer test procedure. In particular, DOE seeks information, data, and comments on the following topics as they relate to automatic cycle termination: test load characteristics, accuracy of different automatic cycle termination sensors and controls, conditions of water used to wet the dryer test load, and automatic termination cycle settings to be tested.

C. Equipment Price Forecasting

AHAM expressed concern regarding the use of experience curves in equipment price forecasting. It stated that using experience curves (1) Does not make the analysis more accurate; (2) gives the appearance, but not the reality, of a more objective analysis; (3) hides the subjectivity in the data selection process rather than in the analysis itself; and (4) has no material effect on the ordering of the conclusions. (AHAM, No. 60 at p. 2) As discussed in section IV.F.1 of the direct final rule, DOE evaluated the above concerns (and those expressed by other commenters on the NODA) and determined that retaining the assumption-based approach of a constant real price trend was not consistent with the historical data for the products covered in this rule. Instead, consistent with the method proposed in the NODA, DOE used experience curve fits to forecast product costs. To evaluate the impact of the uncertainty of the price trend estimates, DOE performed price trend sensitivity calculations in the national impact analysis to examine the dependence of the analysis results on different analytical assumptions. DOE found that for the selected standard levels the benefits outweighed the burdens under all scenarios. DOE notes that it may modify its price trend forecasting methods as more data and information becomes available.

D. Indirect Environmental Impacts

AHAM stated that, to understand the total environmental impact, DOE's analysis should also consider indirect CO_2 emissions, such as increased carbon emissions required to manufacture a product at a given standard level, increased transportation and related emissions, and reduced carbon emissions from peak load reductions. (AHAM, No. 60 at p. 2) As discussed in section II.A.3, DOE is evaluating the full-fuel-cycle measure, which includes the energy consumed in extracting, processing, and transporting primary fuels. DOE's current accounting of primary energy savings and the full-fuel-cycle measure are directly linked to the energy used by appliances or equipment. DOE believes that energy used in the manufacture or transport of appliances or equipment falls outside the boundaries of "directly" as intended by EPCA. Thus, DOE did not consider such energy use in the national impact analysis. DOE did not include the emissions associated with such energy use for the same reason.

E. Other Comments

DOE received one comment from a private citizen generally supporting the standards in the direct final rule.

IV. Department of Justice Analysis of Competitive Impacts

EPCA directs DOE to consider any lessening of competition that is likely to result from new or amended standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE published a NOPR containing energy conservation standards identical to those set forth the direct final rule and transmitted a copy of the direct final rule and the accompanying TSD to the Attorney General, requesting that the U.S. Department of Justice (DOJ) provide its determination on this issue. DOE has published DOJ's comments at the end of this notice.

DOJ reviewed the amended standards in the direct final rule and the final TSD provided by DOE, and also conducted interviews with industry members. As a result of its analysis, DOJ concluded that the amended standards issued in the direct final rule are unlikely to have a significant adverse impact on competition. DOJ further noted that the amended standards established in the direct final rule were the same as recommended standards submitted in the Joint Petition signed by industry participants who believed they could meet the standards (as well as other interested parties).

V. Amended Compliance Dates

In the direct final rule and corresponding NOPR published in the **Federal Register** on April 21, 2011, DOE provided for a compliance date for the amended energy conservation standards for residential clothes dryers and room air conditioners of 3 years after the date of publication, or April 21, 2014. The standards set forth in the direct final rule and NOPR were consistent with the Consensus Agreement that served as the basis for those rulemaking actions. The Consensus Agreement also provided specific compliance dates for both products—June 1, 2014 for room air conditioners and January 1, 2015 for clothes dryers. The compliance date of the direct final rule and NOPR did not correspond with the compliance dates

specified in Consensus Agreement. As a result, DOE proposed to amend the compliance dates set forth in the direct final rule and corresponding NOPR to be consistent with the compliance dates set out in the consensus agreement. DOE received comments in support of the amended compliance dates and did not receive any comments objecting to those amended dates. In a final rule published elsewhere in today's **Federal Register**, DOE adopts the compliance dates for the standards established in the direct final specified in the Consensus Agreement—June 1, 2014 for room air conditioners and January 1, 2015 for clothes dryers.

VI. National Environmental Policy Act

Pursuant to the National Environmental Policy Act and the requirements of 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE prepared an environmental assessment (EA) of the impacts of the standards for clothes dryers and room air conditioners in the direct final rule, which was included as chapter 15 of the direct final rule TSD. DOE found that the environmental effects associated with the standards for clothes dryers and room air conditioners were not significant. Therefore, after consideration of the comments received on the direct final rule, DOE issued a Finding of No Significant Impact (FONSI) pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking and at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/fonsi.pdf.*[6]

VII. Conclusion

In summary, based on the discussion above, DOE has determined that the comments received in response to the direct final rule for amended energy conservation standards for residential clothes dryers and room air conditioners do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the amended energy conservation standards set forth in the direct final rule were effective on August 19, 2011. Pursuant to the document published elsewhere in today's **Federal Register**, compliance with these standards is required on June 1, 2014 for room air conditioners and on January 1, 2015 for clothes dryers.

[6] DOE stated erroneously in the direct final rule published on April 21, 2011 that the FONSI had been issued at that time. This document corrects that statement.

Issued in Washington, DC, on August 18, 2011.

Timothy Unruh,

Program Manager, Federal Energy Management Program, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–21640 Filed 8–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 159

[USCBP–2010–0008;–CBP Dec. 11—17]

RIN 1515–AD67 (formerly RIN 1505–AC21)

Courtesy Notice of Liquidation; Correction

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

ACTION: Final rule; correction.

SUMMARY: U.S. Customs and Border Protection ("CBP") published in the **Federal Register** of August 17, 2011, a final rule concerning the discontinuation of electronic courtesy notices of liquidation to importers of record whose entry summaries are filed in the Automated Broker Interface ("ABI"). In the preamble of the final rule document, CBP made a misstatement in a comment response regarding the availability to an importer of an Importer Trade Activity (ITRAC) report—a historical report on all of an importer's importation activity over a set time period. CBP incorrectly stated that C–TPAT members may receive ITRAC reports for free. This document corrects the August 17, 2011 document to reflect that the Importer Self-Assessment ("ISA") members, rather than C–TPAT members, receive free ITRAC reports.

DATES: This correction is effective August 24, 2011. The final rule is effective September 30, 2011. The implementation date will be the first day on or after September 30, 2011, that CBP can provide importers with complete liquidation reports, including liquidation dates, electronically through the ACE Portal. CBP will confirm the date of implementation through electronic notification (see *CBP.gov*).

FOR FURTHER INFORMATION CONTACT: Laurie Dempsey, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202–863–6509.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** issue of Wednesday, August 17, 2011, in FR Doc. 2011–20957, please make the following two corrections:

1. On page 50883, in the third column, please remove in the heading of the document "[USCBP–2010–0008; BP Dec. 11–17]" and add in its place "[USCBP–2010–0008; CBP Dec. 11–17]";

2. On page 50886, in the second column, the last sentence of the second full paragraph, please remove the term "a C–TPAT member" and add in its place the term "an Importer Self-Assessment ("ISA") member".

Dated: August 19, 2011.

Joanne Roman Stump,

Acting Director, Regulatians and Disclasure Law Divisian, U.S. Customs and Border Protection.

Heidi Cohen,

Senior Counsel far Regulatary Affairs, Office af the Assistant General Caunsel far General Law, Ethics & Regulatian, U.S. Department af the Treasury.

[FR Doc. 2011–21620 Filed 8–23–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 24, 25, 26, 40, 41, and 70

[Docket No. TTB–2011–0001; T.D. TTB–94; Re: T.D. TTB–89; Notice No. 115; T.D. TTB–41; TTB Notice No. 56; T.D. ATF–365; and ATF Notice No. 813]

RIN 1513–AB43

Time for Payment of Certain Excise Taxes, and Quarterly Excise Tax Payments for Small Alcohol Excise Taxpayers

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is adopting, as a final rule, regulations contained in a temporary rule pertaining to the semimonthly payments of excise tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, and pertaining to the quarterly payment of alcohol excise tax by small taxpayers. This final rule action does not include those regulations contained in the temporary rule pertaining to part 19 of the TTB regulations, which were adopted as a final rule in a separate regulatory initiative.

DATES: *Effective Date:* This final rule is effective August 24, 2011.

FOR FURTHER INFORMATION CONTACT: For questions concerning tax payment procedures and quarterly filing procedures, contact Jackie Feinauer, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (513–684–3442). For questions concerning this document, contact Jennifer Berry, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (540–344–9333).

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986 (IRC). These provisions of the IRC concern the taxation of distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes. TTB's responsibilities include promulgating regulations to implement the statutory provisions pertaining to the time and method for payment of the applicable excise taxes. *See* 26 U.S.C. 5061 pertaining to distilled spirits, wine, and beer and 26 U.S.C. 5703 pertaining to tobacco products and cigarette papers and tubes. Prior to January 24, 2003, TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF) administered these statutory provisions and the regulations thereunder. The regulations implementing the times and methods for payment of these Federal excise taxes are now found in the TTB regulations at 27 CFR parts 19, 24, 25, 26, 40, 41, and 70.

Semimonthly Reporting and Payment of Tax

Generally, the Federal excise taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes are paid on the basis of a semimonthly tax return. The semimonthly periods covered by the tax return are from the 1st day to the 15th day of each month and from the 16th day to the last day of that month. The return must be filed and the tax payment must be made no later than the 14th day after the last day of each semimonthly period.

Accelerated Payment Requirements for the Second Semimonthly Period in September

Uruguay Round Agreements Act

Section 712 of the Uruguay Round Agreements Act (the URAA), Public Law 103–465, 108 Stat. 4809, enacted on December 8, 1994, amended sections 5061(d) and 5703(b)(2) of the IRC to accelerate the time for payment of taxes for most of the second semimonthly period of September. These amendments were adopted in order to ensure receipt of these taxes during the fiscal year to which they relate.

The amendments made by the URAA divided the second semimonthly period in September into two payment periods for distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes. The first of these payment periods runs from September 16 through September 26, and the second of these payment periods runs from September 27 through September 30. The tax return and payment for the period September 16 through September 26 are due on or before September 29 except that, for taxpayers that are not required to pay taxes through electronic funds transfer (EFT), this first payment period ends on September 25 and taxes are due on or before September 28. The statutory amendments did not include an accelerated payment deadline for the second payment period (September 27 through 30) and therefore payment for it is due according to the general semimonthly payment rule (that is, on or before October 14).

The amendments made by the URAA also included a "safe harbor" rule covering the first (accelerated) payment period for taxes due for distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, which permits the taxpayer to meet its obligation to pay tax for that payment period based on payment of a proportion (11/15ths) of the tax liability incurred for the period September 1 through September 15. In addition to the above, the amendments made by the URAA added a special due date rule (that is, the following day) when the due date for the new first (accelerated) payment in September falls on a Sunday.

Temporary Rule T.D. ATF–365

On June 28, 1995, ATF published a temporary rule (T.D. ATF–365) in the **Federal Register** at 60 FR 33665, to implement the changes to sections 5061 and 5703 of the IRC made by section 712 of the URAA. Specifically in this regard, T.D. ATF–365 amended 27 CFR parts 19, 24, 25, 70, 250 (now part 26), 270 (now part 40), 275 (now part 41), and 285 (now part 40), primarily by adding various provisions to those parts relating to reporting and tax payment for distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes.

In addition, T.D. ATF–365 made extensive amendments to the firearms and ammunition excise tax regulations in 27 CFR part 53, some of which were made in response to changes to the IRC by section 712 of the URAA. Subsequent legislation substantially changed the affected IRC provisions.

Quarterly Excise Tax Filing for Small Alcohol Excise Taxpayers

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

Section 11127 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (the SAFETEA), Public Law 109–59, 119 Stat. 1144, enacted on August 10, 2005, amended IRC section 5061(d) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and adding a new paragraph (4), which allows certain small Federal alcohol excise taxpayers to pay taxes quarterly rather than on a semimonthly basis as provided in section 5061(d) before the amendment. Application of this new provision commenced with quarterly tax payment periods beginning on and after January 1, 2006.

Temporary Rule T.D. TTB–41

On February 2, 2006, TTB published in the **Federal Register** (71 FR 5598) a temporary rule, T.D. TTB–41, that amended 27 CFR parts 19, 24, 25, 26, and 70 to implement the new quarterly tax payment procedures of section 5061(d)(4) of the IRC. This temporary rule revised or otherwise amended regulatory texts concerning return or payment periods that had been adopted in T.D. ATF–365. The affected provisions were: Paragraph (a) of § 19.522, paragraph (a) of § 19.523, paragraph (b) and the heading of paragraph (c) of § 24.271, paragraphs (c) and (d) of § 25.164, the section heading and paragraph (a)(1) of § 25.164a, and paragraphs (b) and (d) of § 250.112 (now § 26.112).

Reissuance of T.D. ATF–365 and T.D. TTB–41 as a New Temporary Rule

When T.D. ATF–365 was published, a notice of proposed rulemaking was published in the same issue of the **Federal Register** inviting public comments on that temporary rule; TTB has no record of comments received by ATF in response to this comment solicitation, and no action was taken by ATF to adopt the T.D. ATF–365 temporary regulations as a final rule. A number of subsequent changes to the ATF/TTB regulations were made that affected the texts adopted in T.D. ATF–365, the most substantively significant of which were the changes to the

alcohol excise tax payment provisions made by T.D. TTB–41, which included some revisions of the provisions implementing the URAA section 712 special September rule to accommodate the SAFETEA section 11127 quarterly payment procedure. When T.D. TTB–41 was published, a notice of proposed rulemaking was published in the same issue of the **Federal Register** inviting public comments on that temporary rule. Only one comment was received in response to that comment solicitation, and that commenter expressed support for the rulemaking.

In view of the fact that the regulatory amendments adopted in T.D. TTB–41 in part involved a revision of, and thus depended on, amendments previously made by T.D. ATF–365, TTB determined that it would not be practical to take final action on the T.D. TTB–41 regulations without first finalizing those earlier regulatory amendments. However, because of the significant period of time that had elapsed since T.D. ATF–365 was published, and because there is no record of comments received in response to the notice of proposed rulemaking published in connection with T.D. ATF–365, TTB decided that the best approach would be to publish one new temporary rule that reissued the regulatory texts adopted in T.D. ATF–365 and in T.D. TTB–41, with necessary changes to the T.D. ATF–365 texts to conform them to later amendments.

Temporary Rule T.D. TTB–89 and Notice No. 115

Accordingly, on January 20, 2011, TTB published in the **Federal Register** (76 FR 3502) a temporary rule, T.D. TTB–89, which updated and reissued the alcohol and tobacco regulations contained in T.D. ATF–365 and T.D. TTB–41. We note that T.D. ATF–365 included amendments to the firearms and ammunition excise tax regulations. Due to the passage of the Firearms Excise Tax Improvement Act of 2010 on August 16, 2010, the part 53 regulations were not addressed in T.D. TTB–89, and will be addressed in a separate rulemaking document rather than in this final rule document. In conjunction with the publication of T.D. TTB–89, TTB published a notice of proposed rulemaking, Notice No. 115, in the same issue of the **Federal Register** (76 FR 3584) inviting comments on T.D. TTB–89. TTB received no comments during the comment period, which closed on March 21, 2011.

The temporary regulations published in T.D. TTB–89 included, with updates, the changes to part 19 of the TTB regulations that were contained in T.D. ATF–365 and T.D. TTB–41. However, on February 16, 2011, TTB published a final rule (T.D. TTB–92) in the **Federal Register** at 76 FR 9080, which completely revised the distilled spirits plant regulations in 27 CFR part 19 and which took effect on April 18, 2011. This revision of part 19 included the substance of the changes to part 19 contained in T.D. TTB–89, with the only differences involving the reorganization of the regulatory sections in question and editorial wording changes to enhance the clarity of the texts. In view of the adoption of those texts in the T.D. TTB–92 final rule, it is not necessary to include them in this final rule action.

TTB Determination

Accordingly, TTB has determined that, with the exception of the amendments to part 19, the temporary regulations published as T.D. TTB–89 should be adopted as a final rule without change.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that these regulations will not have a significant economic impact on a substantial number of small entities. Any revenue effects of this rulemaking on small businesses flow directly from the underlying statutes. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

This is not a significant regulatory action as defined in E.O. 12866. Therefore, it requires no regulatory assessment.

Paperwork Reduction Act

The collections of information in the regulations contained in this final rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and assigned control numbers 1513–0009, 1513–0053, 1513–0083, 1513–0090, and 1513–0104. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. There is no new collection of information imposed by this final rule.

Inapplicability of the Delayed Effective Date Requirement

Because this final rule document implements provisions of law that were effective on January 1, 1995, and January 1, 2006, and the regulations adopted in this final rule are already in effect as temporary regulations, it has been determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to issue these regulations without a delayed effective date.

Drafting Information

Kara T. Fontaine and Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin Initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of Information, Law enforcement, Penalties, Surety bonds.

Amendments to the Regulations

For the reasons set forth in the preamble, those portions of the temporary rule published as T.D. TTB–89 in the **Federal Register** at 76 FR 3502 on January 20, 2011, that amended 27 CFR parts 24, 25, 26, 40, 41, and 70 are adopted as a final rule without change.

Signed: June 2, 2011.

John J. Manfreda,

Administrator.

Approved: June 21, 2011.

Timothy E. Skud,

Deputy Assistant Secretary. (Tax, Trade, and Tariff Policy).

[FR Doc. 2011–21615 Filed 8–23–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0266]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patuxent River, Solomons, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the "Chesapeake Challenge" power boat races, a marine event to be held on the waters of the Patuxent River, near Solomons, MD on September 24 and 25, 2011. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Patuxent River during the event.

DATES: This rule is effective from 10 a.m. on September 24, 2011 until 6 p.m. on September 25, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0266 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0266 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 20, 2011, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Patuxent River, Solomons, MD" in the **Federal Register** (76 FR 118). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

On September 24 and 25, 2011, the Chesapeake Bay Power Boat Association will sponsor power boat races on the Patuxent River near Solomons, MD. The event consists of offshore power boats racing in a counter-clockwise direction on an irregularly-shaped course located between the Governor Thomas Johnson Memorial (SR–4) Bridge and the U.S. Naval Air Station Patuxent River, MD. The start and finish lines will be located near the Solomon's Pier. A large spectator fleet is expected during the event. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety determined to be necessary. Vessel traffic will be able to transit safely through a portion regulated area, westward and southward of the spectator fleet area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Patuxent River during the event.

Although this regulation prevents traffic from transiting a portion of the Patuxent River at Solomons, MD during the event, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Though the regulated area extends across the entire width of the river, vessel traffic will be able to transit safely around the spectator fleet and race course areas within the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35–T05–0266 to read as follows:

§ 100.35–T05–0266 Special Local Regulations for Marine Events; Patuxent River, Solomons, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Patuxent River, within lines connecting the following positions: from latitude 38°19′45″ N, longitude 076°28′06″ W, thence to latitude 38°19′24″ N, longitude 076°28′30″ W, thence to latitude 38°18′32″ N, longitude 076°28′14″ W; and from latitude 38°17′38″ N, longitude 076°27′26″ W, thence to latitude 38°18′00″ N, longitude 076°26′41″ W, thence to latitude 38°18′59″ N,

longitude 076°27′20″ W, located at Solomons, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions*—(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the Chesapeake Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations.* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) All vessel traffic, not involved with the event, will be allowed to transit the regulated area and shall proceed in a northerly or southerly direction westward of the spectator area, taking action to avoid a close-quarters situation with spectators, until finally past and clear of the regulated area.

(4) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(5) Only participants and official patrol are allowed to enter the race course area.

(6) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Spectators will be permitted to anchor within the designated spectator area. No vessel may anchor within the regulated area outside the designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area outside the race course and spectator areas at a safe speed and without loitering.

(7) *Designated spectator fleet area.* The spectator fleet area is located within a line connecting the following positions: latitude 38°19′00″ N, longitude 076°28′22″ W, thence to latitude 38°19′07″ N, longitude 076°28′12″ W, thence to latitude 38°18′53″ N, longitude 076°27′55″ W, thence to latitude 38°18′30″ N, longitude 076°27′45″ W, thence to latitude 38°18′00″ N, longitude 076°27′11″ W, thence to latitude 38°17′54″ N, longitude 076°27′20″ W, thence to the point of origin at latitude 38°19′00″ N, longitude 076°28′22″ W. All coordinates reference datum NAD 83.

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement periods.* This section will be enforced:

(1) From 10 a.m. until 6 p.m. on September 24, 2011, and

(2) From 10 a.m. until 6 p.m. on September 25, 2011.

Dated: August 1, 2011.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2011–21598 Filed 8–23–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0509; FRL–9453–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of the Environmental Protection (PADEP). This SIP revision includes amendments to the Commonwealth of Pennsylvania's regulation 25 *Pa. Code* Chapter 129 (relating to standards for sources) and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for large appliance and metal furniture coatings. These amendments will reduce emissions of volatile organic compound (VOC) emissions from large appliance and metal furniture coating facilities. Therefore, this revision will help the Commonwealth of Pennsylvania attain and maintain the national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on October 24, 2011 without further notice, unless EPA receives adverse written comment by September 23, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0509, by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2011–0509, 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–2011–0509. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail

address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 1, 2010, PADEP submitted to EPA a SIP revision concerning the adoption of the EPA CTGs for large appliance and metal furniture coating processes.

I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT, for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

EPA defines RACT as "the lowest emission 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 53761, September 17, 1979). In subsequent **Federal Register** notices, EPA has addressed how states can meet the RACT requirements of the CAA.

CTGs are intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOCs from various sources, including large appliance coatings and metal furniture coatings. In developing these CTGs, EPA, among other things, evaluated the sources of VOC emissions from this industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provides recommendations for RACT for VOCs from large appliance coatings and metal furniture coatings.

In December 1977, EPA published CTGs for large appliance coatings (EPA–450/2–77–034) and surface coating of metal furniture (EPA–450/2–77–032). These CTGs discuss the nature of VOC emissions from these industries, available control technologies for addressing such emissions, the costs of available control options, and other items. EPA promulgated national standards of performance for new stationary sources (NSPS) for large appliance coatings in 1982 (40 CFR part 60, subpart SS) and surface coating of metal furniture in 1982 (40 CFR part 60, subpart EE). The NSPS requires VOC emissions limits based on VOC content of low VOC coating materials. EPA also published a national emission standard for hazardous air pollutants (NESHAP) for large appliance coatings in 2002 (40 CFR part 63, subpart NNNN) and surface coating of metal furniture in 2003 (40 CFR part 63, subpart RRRR). The NESHAP establishes national emission standards for hazardous air pollutants and emissions limits based on the organic hazardous air pollutants (HAP) content of low organic HAP coating materials.

In 2006 and 2007, after conducting a review of currently existing state and local VOC emission reduction approaches for these industries, reviewing the 1977/1978 CTGs and the NESHAPs for these industries, and taking into account the information that has become available since then, EPA developed new CTGs for surface coating of large appliances, entitled *Control Techniques Guidelines for Large Appliance Coatings* (Publication No. EPA 453/R–07–004; September 2007) and surface coating of metal furniture, entitled *Control Techniques Guidelines for Metal Furniture Coatings* (Publication No. EPA 453/R–07–005; September 2007).

Large appliance coatings include, but are not limited to, materials referred to as paint, topcoats, basecoats, primers, enamels, and adhesives used in the manufacture of large appliance parts or products. Coatings are a critical constituent to the large appliance industry. The metal furniture coatings product category includes the coatings that are applied to the surfaces of metal furniture. Metal furniture coatings serve decorative, protective, and functional purposes. VOC emissions from large appliance and metal furniture surface coating processes result from the evaporation of the components of the coatings and cleaning materials.

II. Summary of SIP Revision

On October 1, 2010, PADEP submitted to EPA a SIP revision concerning the adoption of the EPA CTGs for large appliance and metal furniture coatings. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. PADEP amended existing regulations at 25 *Pa. Code* sections 129.51 and 129.52 (relating to general and surface coating processes) and added section 129.52(a) (relating to control of VOC emissions from large appliance and metal furniture surface coating processes) in order to control VOC emissions from large appliance and metal furniture surface coating processes. This action affects sources that use large appliance and metal furniture surface coating processes in the Commonwealth of Pennsylvania.

Regulation, section 129.51(a), entitled "Equivalency" includes large appliance and metal furniture surface coating processes and provides an alternative method for owners and operators of facilities to achieve compliance with air emission limits. Regulation, section 129.52, entitled "Surface coating processes" specifies the requirements and emission limits for various surface coating processes. Section 129.52 also establishes that the requirements and limits for metal furniture coatings and large appliance coatings already specified in this section are superseded by the requirements and limits in section 129.52(a) (relating to control of VOC emissions from large appliance and metal furniture surface coating processes). New regulation, section 129.52(a), entitled "Control of VOC emissions from large appliance and metal furniture surface coating processes" establishes the following emissions limits of VOCs for large

appliance and metal surface coatings shown in Tables 1 and 2.

TABLE 1—EMISSION LIMITS OF VOCS FOR LARGE APPLIANCE SURFACE COATINGS

[Weight of VOC per volume of coating solids, as applied]

Coating type	Baked		Air dried	
	Kilograms per liter (kg/l)	Pounds per gallon (lb/gal)	kg/l	lb/gal
General, One Component	0.40	3.34	0.40	3.34
General, Multi-Component	0.40	3.34	0.55	4.62
Extreme High Gloss	0.55	4.62	0.55	4.62
Extreme Performance	0.55	4.62	0.55	4.62
Heat Resistant	0.55	4.62	0.55	4.62
Metallic	0.55	4.62	0.55	4.62
Pretreatment	0.55	4.62	0.55	4.62
Solar Absorbent	0.55	4.62	0.55	4.62

TABLE 2—EMISSION LIMITS OF VOCS FOR METAL FURNITURE SURFACE COATINGS

[Weight of VOC per volume of coating solids, as applied]

Coating type	Baked		Air dried	
	kg/l	lb/gal	kg/l	lb/gal
General, One Component	0.40	3.34	0.40	3.34
General, Multi-Component	0.40	3.34	0.55	4.62
Extreme High Gloss	0.61	5.06	0.55	4.62
Extreme Performance	0.61	5.06	0.61	5.06
Heat Resistant	0.61	5.06	0.61	5.06
Metallic	0.61	5.06	0.61	5.06
Pretreatment	0.61	5.06	0.61	5.06
Solar Absorbent	0.61	5.06	0.61	5.06

The emission limits in Tables 1 and 2 provide consistency in the number of significant digits. The emission limit of 3.3 lb/gal was revised to 3.34 lb/gal in the Baked—"General, One Component" and "General, Multi-Component" and in the Air Dried—"General, One Component" coatings. The 4.62 lb/gal emission limit in the Air Dried—"General, Multi-Component" and "Extreme High Gloss" coatings provides consistency with the limit in section 129.52. Although the 4.62 lb/gal emission limit is greater than the 4.5 lb/gal emission limit recommended in the CTGs, the difference is due to different methodologies used for rounding during the conversion from metric units to English units. However, the emission reduction that will be achieved is equivalent. Further details of Tables 1 and 2 can be found in a Technical Support Document (TSD) prepared for this rulemaking. Additionally, the regulation establishes applicability, limitations, exempt solvents, application techniques, and work practices.

III. Final Action

Pennsylvania's October 1, 2010 SIP revision meets the CAA requirement to include RACT for sources covered by the EPA CTGs for the large appliance and metal furniture coating processes. Therefore, EPA is approving the Pennsylvania SIP revision for adoption of the CTG standards for large appliance and metal furniture coating processes. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 24, 2011 without further notice unless EPA receives adverse comment by September 23, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action pertaining to Pennsylvania's adoption of the CTG standards for large appliance and metal furniture coating processes may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by revising the entries for Sections 129.51 and 129.52, and adding an entry for Section 129.52a. The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation § 52.2063 citation
	Title 25—Environmental Protection Article III—Air Resources			
	Chapter 129—Standards for Sources			
	Sources of VOCs			
Section 129.51	General	12/18/10	8/24/2011 *[Insert page number where the document begins].*	Paragraph 129.51(a) is amended. The State effective date is 9/11/10.
Section 129.52	Surface coating processes	11/20/10	8/24/2011 *[Insert page number where the document begins].*	Paragraph 129.52(i) is added. The State effective date is 9/11/10.
Section 129.52a	Control of VOC emissions from large appliance and metal furniture surface coating processes.	9/11/10	8/24/2011 *[Insert page number where the document begins].*	New section is added.

* * * * *

[FR Doc. 2011–21362 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0087; FRL–8884–6]

Pseudomonas fluorescens Strain CL145A; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Pseudomonas fluorescens* strain CL145A in or on all food commodities when applied as a molluscicide. Marrone Bio Innovations, Inc. (formerly Marrone Organic Innovations, Inc.) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Pseudomonas fluorescens* strain CL145A under the FFDCA.

DATES: This regulation is effective August 24, 2011. Objections and requests for hearings must be received on or before October 24, 2011, 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–2009–0087. 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 Office of Pesticide Programs (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: Ann Sibold, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address: *sibold.ann@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, pesticide manufacturer, hydroelectric power facility operator or water supply system operator. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).
- Hydroelectric power generation (NAICS code 221111).
- Water supply and irrigation systems (NAICS code 221310).

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 electronic access to other related information?

You may access a frequently updated electronic version of 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*. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), 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–2009–0087 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 October 24, 2011. 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–2009–0087, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* 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. Background and Statutory Findings

In the **Federal Register** of March 16, 2009 (74 FR 11100) (FRL–8405–1), 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 tolerance petition (PP 9F7511) by Marrone Bio Innovations, Inc. (formerly Marrone Organic Innovations, Inc.), 2121 Second Street, Suite B–107, Davis, CA 95618. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Pseudomonas fluorescens* strain CL145A in or on all food commodities when applied as a molluscicide. This notice referenced a summary of the petition prepared by the petitioner,

Marrone Bio Innovations, Inc. (formerly Marrone Organic Innovations, Inc.), which is available in the docket via *http://www.regulations.gov*. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(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. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption 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. * * *" Additionally, section 408(b)(2)(D) of FFDCA requires that the EPA consider "available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information 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.

A. Overview of Pseudomonas fluorescens and Pseudomonas fluorescens Strain CL145A

Pseudomonas fluorescens is ubiquitous in soil and water and is commonly associated with plants, including those food plants consumed raw. The Manual of Clinical Microbiology (8th edition) states the following: "*Pseudomonas* spp. have a worldwide distribution with a predilection for moist environments. They are found in water and soil and on plants, including fruits and vegetables" (Ref. 1). Although *Pseudomonas fluorescens* is of low virulence and usually not clinically significant, it has been associated with opportunistic infections in compromised patients when *Pseudomonas fluorescens*-contaminated blood product was used for transfusions.

In the past, EPA has registered several pesticide products, each containing a different isolate of *Pseudomonas fluorescens* as an active ingredient:

1. *Pseudomonas fluorescens* strain NCIB 12089—used as a mushroom blotch control agent and exempted from the requirement of a tolerance (40 CFR 180.1129) in the **Federal Register** of August 24, 1994 (59 FR 43490) (FRL–4899–5);

2. *Pseudomonas fluorescens* A506 and *Pseudomonas fluorescens* 1629RS—used for reduction of frost and frost damage on various food crops and exempted from the requirement of a tolerance (40 CFR 180.1114) in the **Federal Register** of September 16, 1992 (57 FR 42700) (FRL–4161–1); and

3. *Pseudomonas fluorescens* EG–1053—used for control of the *Pythium-Rhizoctonia* seedling disease complex of cotton and exempted from the requirement of a tolerance (40 CFR 180.1088) in the **Federal Register** of March 10, 1988 (53 FR 7740) (FRL–3339–2).

Out of these isolates, only *Pseudomonas fluorescens* A506 is still contained in an actively registered pesticide product.

Pseudomonas fluorescens strain CL145A is a naturally occurring bacterial species that was isolated from a river mud sample in the northeastern United States. This isolate is being registered as a biocontrol agent for zebra mussels (*Dreissena polymorpha*) and quagga mussels (*Dreissena bugensis*) that infest enclosed and other confined static or flowing water infrastructures (e.g., water storage chambers and tanks, pipes, general plumbing and equipment, and other water conveyance structures associated with civil infrastructure). When a zebra or quagga mussel ingests artificially high densities of *Pseudomonas fluorescens* strain CL145A, a toxin within this bacterium's cells destroys the digestive system of the mussel.

B. Microbial Pesticide Toxicology Data Requirements

All mammalian toxicology data requirements supporting the request for an exemption from the requirement of a tolerance for residues of *Pseudomonas fluorescens* strain CL145A in or on all food commodities have been fulfilled with data submitted by the petitioner or data waiver requests that have been granted by EPA. Acceptable (i.e., data that are scientifically sound and useful for risk assessment) acute oral toxicity, acute inhalation toxicity, and acute pulmonary toxicity/pathogenicity data, which addressed potential routes of exposure to the active ingredient and which tested doses significantly higher than or comparable to the labeled application rates, were classified in Toxicity Categories IV or III (toxicity studies) (see 40 CFR 156.62) or indicated that *Pseudomonas fluorescens* CL145A was not toxic, infective and/or pathogenic (toxicity/pathogenicity study). The overall conclusions from all toxicological information submitted by the petitioner is described below, while more in-depth synopses of the study results can be found in the associated Biopesticides Registration Action Document provided as a reference in Unit IX. (Ref. 2).

1. *Acute oral toxicity—rat (Harmonized Guideline 870.1100; Master Record Identification Number (MRID No.) 476402–02).* An acceptable acute oral toxicity study demonstrated that *Pseudomonas fluorescens* strain CL145A was not toxic to rats when dosed at 5,000 milligrams per kilogram (mg/kg) (or 2.35×10^{10} colony-forming units per kilogram (CFU/kg)). The no observed adverse effect level (NOAEL) and median lethal dose (LD_{50}) (i.e., a statistically derived single dose that can be expected to cause death in 50% of test animals) were greater than 5,000 mg/kg (or greater than 2.35×10^{10} CFU/kg) (Toxicity Category IV).

2. *Acute oral toxicity/pathogenicity (Harmonized Guideline 885.3050; MRID No). 477494–03).* The rationale provided in support of a data waiver request for acute oral toxicity/pathogenicity stated that *Pseudomonas fluorescens* is considered an ubiquitous inhabitant of soil and water and is found on the surface and roots of a variety of plant types, including food plants consumed raw. Pseudomonads and, in particular, *Pseudomonas fluorescens* are considered a benign part of the regular

human diet commonly occurring on the surface of leafy green vegetables and other food stuffs (Refs. 1, 3, and 4). Additionally, an acute oral toxicity study conducted on rats (MRID No. 476402–02) found the NOAEL and LD_{50} were greater than 5,000 mg/kg, corresponding to greater than 2.35×10^{10} CFU/kg (Toxicity Category IV). Based on this rationale, oral infectivity, clearance, and pathogenicity testing for *Pseudomonas fluorescens* strain CL145A was waived. It should be noted that this is a different data requirement from the acute oral toxicity test (Harmonized Guideline 870.1100; MRID No. 476402–02), which only evaluated toxicity, but not pathogenicity and infectivity potential, of the microbial pest control agent.

3. *Acute inhalation toxicity—rat (Harmonized Guideline 870.1300; MRID No. 476402–04).* An acceptable acute inhalation toxicity study demonstrated that *Pseudomonas fluorescens* strain CL145A was not toxic to rats when exposed to approximately 0.225 milligrams per liter (mg/L) (or 1.1×10^6 colony-forming units per liter (CFU/L)). The NOAEL and median lethal concentration (LC_{50}) were greater than 0.225 mg/L (or greater than 1.1×10^6 CFU/L) (Toxicity Category II but upgraded to Toxicity Category III with the results of MRID No. 482767–02. The dose used in the acute pulmonary toxicity/pathogenicity study (MRID No. 482767–02), which looked at the same route of exposure and did not show any toxicity, pathogenicity, and/or infectivity, was greater than the dose used in the study described in this unit. Thus, this allowed the Toxicity Category, as initially established in this study, to be upgraded from II to III.).

4. *Acute pulmonary toxicity/pathogenicity—rat (Harmonized Guideline 885.3150; MRID No. 482767–02):* An acceptable acute pulmonary toxicity and pathogenicity study demonstrated that *Pseudomonas fluorescens* strain CL145A was not toxic, infective, and/or pathogenic to rats when dosed intratrachaelly at 3.4×10^8 colony-forming units (CFU)/rat. As detailed in the acute inhalation toxicity study summary in this unit, this study upgraded the Toxicity Category for MRID No. 476402–04 from II to III.

5. *Acute dermal toxicity—rat (Harmonized Guideline 870.1200; MRID No. 476402–03).* An acceptable acute dermal toxicity study demonstrated that *Pseudomonas fluorescens* strain CL145A was not toxic to rats when dosed at 5,050 mg/kg (or 2.38×10^{10} CFU/kg). The LD_{50} was greater than 5,050 mg/kg (or greater than 2.38×10^{10} CFU/kg) (Toxicity Category IV).

6. *Acute eye irritation—rabbit (Harmonized Guideline 870.2400; MRID No. 476402–05).* An acceptable acute eye irritation study demonstrated that *Pseudomonas fluorescens* strain CL145A was practically non-irritating to rabbits (irritation symptoms cleared by 48 hours; Toxicity Category IV).

7. *Primary dermal irritation—rabbit (Harmonized Guideline 870.2500; MRID No. 476402–06).* An acceptable primary dermal irritation study demonstrated that *Pseudomonas fluorescens* strain CL145A was practically non-irritating to rabbits (irritation symptoms cleared by 24 hours; Toxicity Category IV).

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Pseudomonas fluorescens strain CL145A end-use products are not labeled for direct application to food crops. Any potential food exposures would be as a result of its presence in water. Thus, minimal dietary exposure to this microbial pesticide may occur through irrigation water, wash water or drinking water (see discussions of food and drinking water exposures in this unit); however, the lack of acute oral toxicity, as exhibited in a toxicology test on rats, and the rationales justifying the waiver of acute oral toxicity/pathogenicity testing (see Unit III.B.) support the establishment of a tolerance exemption for residues of *Pseudomonas fluorescens* strain CL145A.

1. *Food.* Exposure to this microbial active ingredient through food is expected to be minimal. *Pseudomonas fluorescens* strain CL145A end-use products are not labeled for direct application to food crops. Rather, *Pseudomonas fluorescens* strain CL145A will be applied to water in enclosed and other confined static or flowing water infrastructures to control zebra and quagga mussels. The treatment areas are limited to completely enclosed pipe or water conveyance systems or concrete chambers with defined inlets or outlets. Nevertheless, water drawn downstream from points of application (e.g., pump stations and irrigation systems) and used to irrigate or wash food crops may contain *Pseudomonas fluorescens* strain CL145A. Concentrations of *Pseudomonas fluorescens* will be diluted as water flows past points of application and thus will rapidly decrease. Also, natural degradation (e.g., environmental factors such as ultraviolet light, nutrient depletion and bacterial grazing/predation by protists and others) and manmade filtering operations are expected to greatly lower the overall level of the pesticide after application (Refs. 5 and 6). Furthermore, *Pseudomonas fluorescens* is considered ubiquitous in soil and water and is commonly associated with plants, including food plants consumed raw; thus, this microorganism is already part of the normal human diet (Refs. 1, 3, and 4). Exposure to *Pseudomonas fluorescens* strain CL145A through food that has come into contact with treated irrigation or wash waters is not expected to exceed background levels of similar Pseudomonads already present in the human diet (Refs. 1, 3, and 4). Nonetheless, in the unlikely event that this microbial pesticide is present on food, the acute oral toxicity and pathogenicity data/information demonstrated no toxicity, infectivity and/or pathogenicity is likely to occur with any exposure level of *Pseudomonas fluorescens* strain CL145A (see additional discussion in Unit III.B.).

2. *Drinking water exposure.* Much like food exposure, drinking water exposure is expected to be negligible for similar reasons:

i. Concentrations of *Pseudomonas fluorescens* strain CL145A will be diluted as water flows past points of application;

ii. Natural degradation (e.g., environmental factors such as ultraviolet light, nutrient depletion and bacterial grazing/predation by protists and others) of the microbial active ingredient will occur; and

iii. Flocculation and filtering at water treatment plants will further inactivate and decrease levels of *Pseudomonas fluorescens* strain CL145A (Refs. 5 and 6). Additionally, *Pseudomonas fluorescens* is already present naturally in soil, in water, and on plants, thereby making it a part of the normal human diet (Refs. 1, 3, and 4). Exposure to *Pseudomonas fluorescens* strain CL145A through drinking water is not expected to exceed background levels of similar Pseudomonads already present in the human diet (Refs. 1, 3, and 4). Nonetheless, in the unlikely event that this microbial pesticide is present in drinking water, the acute oral toxicity and pathogenicity data/information demonstrated no toxicity, infectivity and/or pathogenicity is likely to occur

with any exposure level of *Pseudomonas fluorescens* strain CL145A (see additional discussion in Unit III.B.).

B. Other Non-Occupational Exposure

Dermal and inhalation non-occupational exposure to *Pseudomonas fluorescens* strain CL145A is expected to be minimal to non-existent. *Pseudomonas fluorescens* strain CL145A end-use products are labeled for application to use sites—enclosed and other confined static or flowing water infrastructures infested with zebra and/or quagga mussels—that are not considered residential areas.

1. *Dermal exposure.* Although dermal exposure to *Pseudomonas fluorescens* strain CL145A may occur when water from a treated dam or industrial facility is discharged to surface water and is subsequently used by a community water system in a residential area, such exposure is expected to be minimal due to dilution, natural degradation, and filtering at water treatment plants (Refs. 5 and 6). Moreover, acute dermal toxicity and primary dermal irritation tests demonstrated that *Pseudomonas fluorescens* strain CL145A is not toxic and is practically non-irritating via the dermal route of exposure (see additional discussion in Unit III.B.).

2. *Inhalation exposure.* Inhalation exposure to *Pseudomonas fluorescens* strain CL145A is not anticipated with the labeled (i.e., water-based) molluscicide use. If inhalation exposure to *Pseudomonas fluorescens* strain CL145A were to occur in gardens, lawns, or buildings (i.e., residential areas), such exposure would not exceed EPA's level of concern given the acute inhalation toxicity and acute pulmonary toxicity/pathogenicity tests that demonstrated *Pseudomonas fluorescens* strain CL145A's lack of toxicity, pathogenicity and/or infectivity (see additional discussion in Unit III.B.).

V. 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 exemption, EPA 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 *Pseudomonas fluorescens* strain CL145A to share a common mechanism of toxicity with any other substances. *Pseudomonas fluorescens* strain CL145A affects gut function in the target molluscs and does not produce a similar toxic response in the other species tested. For the purposes of this tolerance action, therefore, EPA has assumed that *Pseudomonas fluorescens* strain CL145A does not have a common mechanism of toxicity with other substances. Following from this, therefore, EPA concludes that there are no cumulative effects associated with *Pseudomonas fluorescens* strain CL145A that need to be considered. 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 website at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) 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 that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act 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.

Based on the acute toxicity and pathogenicity data/information discussed in Unit III.B., EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *Pseudomonas fluorescens* strain CL145A. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because, considered collectively, the data (e.g., lack of toxicity noted for oral, dermal, and inhalation routes of exposure) available on *Pseudomonas fluorescens* strain CL145A do not demonstrate toxic, pathogenic, and/or infective potential to sensitive populations from exposure to this microbial pest control agent. Thus, there are no threshold effects of concern and, as a result, an additional margin of safety is not necessary.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

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. In this context, 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 *Pseudomonas fluorescens* strain CL145A.

C. Response to Comments

In response to the Notice of Filing, EPA received one comment, protesting the presence of this product in food, the proposed exemption from the requirement of a tolerance, and the toxicity of the product. In response, EPA again emphasizes that *Pseudomonas fluorescens* strain CL145A is present naturally in soil and water (Refs. 1, 3, and 4), is not toxic, pathogenic, and/or infective for dietary considerations (see additional discussion in Unit III.B.), and, in any event, is expected to degrade quickly in the environment (Ref. 6). Biological materials from dead cells would be consumed by degradative microflora in treatment areas, and the few live cells diluted in treated waters would likely not approach the levels of *Pseudomonas fluorescens* already present in water, in soil, and on foods (Refs. 1, 3, 4, and 6). EPA has concluded there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Pseudomonas fluorescens* strain CL145A in or on all food commodities (see Unit VIII.). Thus, under the

standard in FFDCA section 408(c)(2), a tolerance exemption is appropriate.

VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Pseudomonas fluorescens* strain CL145A. Therefore, an exemption from the requirement of a tolerance is established for residues of *Pseudomonas fluorescens* strain CL145A in or on all food commodities when applied as a molluscicide.

IX. References

1. Murray PR, Baron E, Jorgensen JH, Pfaller MA, Yolken RH, editors. 2003. Manual of Clinical Biology. 8th ed. Washington (DC): ASM Press.
2. U.S. EPA. 2011. *Pseudomonas fluorescens* strain CL145A Biopesticides Registration Action Document dated July 2011 (available as "Supporting & Related Material" within docket ID number EPA–HQ–OPP–2011–0568 at *http://www.regulations.gov*).
3. Garrity GM, Bell JA, Lilburn T, editors. 2005. "Pseudomonadales" *in* Bergey's Manual of Systematic Bacteriology. 2nd ed. New York (NY): Springer.
4. Organisation for Economic Co-operation and Development. 1997. Consensus Document on Information Used in the Assessment of Environmental Applications Involving *Pseudomonas*. Available from *http://www.rebeca-net.de/downloads/OECD%20Consensus%20document%20pseudomonas.pdf*.
5. U.S. EPA. 2004. Primer for Municipal Wastewater Treatment Systems. EPA 832–R–04–001.
6. U.S. EPA. 1996. Microbial Pesticide Test Guidelines—Background for Residue Analysis of Microbial Pest Control Agents (OPPTS 885.2000). Available from *http://www.epa.gov/ocspp/pubs/frs/publications/Test_Guidelines/series885.htm*.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to EPA. 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 exemption 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. As a result, this action does not 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, EPA 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, EPA 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 EPA 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).

XI. 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: July 29, 2011.

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 180.1304 is added to subpart D to read as follows:

§ 180.1304 Pseudomonas fluorescens strain CL145A; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Pseudomonas fluorescens* strain CL145A in or on all food commodities when applied as a molluscicide.

[FR Doc. 2011–21249 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0430; FRL–8881–5]

2-Propenoic Acid, Polymer With Ethenylbenzene and (1-methylethenyl) Benzene, Sodium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This

regulation eliminates the need to establish a maximum permissible level for residues of 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt on food or feed commodities.

DATES: This regulation is effective August 24, 2011. Objections and requests for hearings must be received on or before October 24, 2011, 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–2011–0430. 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: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@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:

- 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 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 electronic access to other related information?

You may access a frequently updated electronic version of 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. 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–2011–0430 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 October 24, 2011. 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–2011–0430, 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. Background and Statutory Findings

In the **Federal Register** Wednesday, July 6, 2011 (76 FR 39358) (FRL–8875–6), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 1E7862) filed by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt; CAS Reg. No. 129811–24–1. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(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 use 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 an exemption from the requirement of 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. * * *" and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under

reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt is 2,863 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. 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 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt to share a common mechanism of toxicity with any other substances, and 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt 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.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold 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 data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

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 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance 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 rules 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 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).

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, or otherwise have any unique impacts on local governments. 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).

Although this action does not 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), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. 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 rule in the **Federal Register.** This 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: August 15, 2011.

Lois Rossi,

Director, Registration Division, 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. In § 180.960, the table is amended by adding alphabetically the following polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
2-Propenoic acid, polymer with ethenylbenzene and (1-methylethenyl) benzene, sodium salt, minimum number average molecular weight (in amu), 2,800	129811–24–1
* * * * * * *	

[FR Doc. 2011–21371 Filed 8–23–11; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

Correction

In rule document 2011–20963 appearing on pages 50915–50918 in the issue of Wednesday, August 17, 2011, make the following correction:

§ 65.4 [Amended]

■ 1. On page 50917, in the untitled table, the second through the sixth entries should read:

Colorado:					
Adams (FEMA Docket No.: B–1186).	City of Commerce City (10–08–0226P).	February 1, 2011; February 8, 2011; *The Commerce City Sentinel Express.*	The Honorable Paul Natale, Mayor, City of Commerce City, 7887 East 60th Avenue, Commerce City, CO 80022.	June 8, 2011	080006
Adams (FEMA Docket No.: B–1191).	City of Thornton (10–08–0748P).	February 17, 2011; February 24, 2011; *The Northglenn-Thornton Sentinel.*	The Honorable Mack Goodman, Mayor Pro Tem, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	June 24, 2011	080007
Adams (FEMA Docket No.: B–1191).	Unincorporated areas of Adams County (10–08–0748P).	February 17, 2011; February 24, 2011; *The Northglenn-Thornton Sentinel.*	The Honorable W.R. "Skip" Fischer, Chairman, Adams County Board of Commissioners, 4430 South. Adams County Parkway, Brighton, CO 80601.	June 24, 2011	080001
Douglas (FEMA Docket No. B–1191).	Unincorporated areas of Douglas County (11–08–0030P).	February 10, 2011; Feburary 17, 2011; *The Douglas County News-Press.*	The Honorable Jill Repella, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	June 17, 2011	080049
Douglas (FEMA Docket No.: B–1195).	Unincorporated areas of Douglas County (11–08–0287P).	March 10, 2011; March 17, 2011; *The Douglas County News-Press.*	The Honorable Jill Repella, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	February 28, 2011	080049

■ 2. On the same page, in the same table, the fourteenth entry should read:

Oklahoma: Tulsa (FEMA Docket No.: B–1113).	City of Broken Arrow, (09–06–3069P).	February 23, 2010; March 2, 2010; *Tulsa Daily Commerce and Legal News.*	The Honorable Mike Lester, Mayor, City of Broken Arrow, 220 South 1st Street, Broken Arrow, OK 74012.	March 18, 2010	400236

■ 3. On the same page, in the same table, the twentieth entry should read:

Texas: Bexar (FEMA Docket No.: B–1135).	City of San Antonio (09–06–3107P).	April 23, 2010; April 30, 2010; *The San Antonio Express-News.*	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	April 26, 2010	480045

■ 4. On page 50918, in the same table, the first through the third entries should read:

Texas:					
Collin (FEMA Docket No.: B–1116).	City of Allen (09–06–3028P).	November 6, 2009; November 13, 2009; *The McKinney Courier-Gazette.*	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	October 28, 2009	480131

Collin (FEMA Docket No.: B–1116).	City of McKinney (09–06–3028P).	November 6, 2009; November 13, 2009; *The McKinney Courier-Gazette.*	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, P.O. Box 517, McKinney, TX 75069.	October 28, 2009	480135
Collin (FEMA Docket No.: B–1113).	City of McKinney (10–06–0322P).	February 4, 2010; February 11, 2010; *The McKinney Courier-Gazette.*	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, P.O. Box 517, McKinney, TX 75069.	June 11, 2010	480135

■ 5. On the same page, in the same table, the ninth entry should read:

Texas: Johnson (FEMA Docket No.: B–1162).	City of Mansfield (10–06–0427P).	July 20, 2010; July 27, 2010; *The Fort Worth Star-Telegram.*	The Honorable David Cook, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	November 24, 2010	480606

[FR Doc. C1–2011–20963 Filed 8–23–11; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2010–0032]

RIN 2127–AK82

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsiderations; correction.

SUMMARY: This document responds to a petition for reconsideration from the Alliance of Automobile Manufacturers regarding a March 2010 final rule on the Federal motor vehicle safety standard for side impact protection. Today's rule makes minor changes to the standard's testing requirements and clarifies some aspects of the standard.

DATES: This rule is effective February 21, 2012.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Christopher J. Wiacek, NHTSA Office of Crashworthiness Standards, telephone 202–366–4801. For legal issues, you may call Deirdre Fujita, NHTSA Office of Chief Counsel, telephone 202–366–2992. The mailing address of these officials is the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On September 11, 2007, NHTSA published a final rule that upgraded Federal Motor Vehicle Safety Standard (FMVSS) No. 214, "Side impact protection," (72 FR 51908, Docket No. NHTSA–2007–29134). Until the final rule, the only dynamic test in FMVSS No. 214 was a moving deformable barrier (MDB) test simulating an intersection collision with one vehicle being struck in the side by another vehicle. The 2007 final rule upgraded FMVSS No. 214 to add a pole test to the standard. The pole test requires all vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) or less (10,000 pounds (lb) or less) to protect front seat occupants in a vehicle-to-pole test simulating a vehicle crashing sideways into narrow fixed objects, such as utility poles and trees. The pole test requires vehicle manufacturers to assure head and improved chest protection in side crashes for a wide range of occupant sizes and over a broad range of seating positions.

Under the September 11, 2007 final rule, vehicles are tested with two sizes of test dummies. A test dummy known as the ES–2re represents mid-size adult male occupants. A test dummy known as the SID–IIs represents smaller stature occupants. The SID–IIs is the size of a 5th percentile adult female. Both the ES–2re and the SID–IIs test dummies are used in the new pole test and in the MDB test. (Prior to the rule, only a first-generation side impact dummy (SID) (49 CFR part 572 subpart F), representing a mid-size adult male, was used in the MDB test.)

The agency received petitions for reconsideration on the September 11, 2007 final rule. The agency addressed the petitions for reconsideration in two documents prior to today's document. To respond to petitioners' concerns about lead time as quickly as possible, the lead time issue, and other matters that needed to be resolved or clarified concerning lead time and the phasing-in of the new requirements, were addressed in an initial response to petitions published June 9, 2008 (73 FR 32473, Docket No. NHTSA–2008–0104).

On March 15, 2010 (75 FR 12123, Docket No. NHTSA–2010–0032), the agency addressed the remaining issues raised by the petitions for reconsideration. In that document, the agency clarified or revised aspects of the test procedures relating to, among other matters: vehicle setup (adjusting the non-struck side seat; adjusting head restraints, shoulder belt anchorages, and adjustable steering wheels, clarifying the vehicle test attitude tolerance); test dummy setup (positioning the SID–IIs; removing redundant foot positioning procedures); and other technical matters.

II. Petition for Reconsideration

The agency received an April 29, 2010 petition for reconsideration of the March 15, 2010 final rule from the Alliance of Automobile Manufacturers

(Alliance).[1] The Alliance sought to address "a small number of areas where the recent FMVSS [No.] 214 requirements are not consistent with the current version of the side impact [New Car Assessment Program] NCAP test procedures." The issues raised by the petitioner relate to the location of the seat on the non-impact side during testing, the adjustment of the SID–IIs lower neck bracket and the height adjustment specification for the head restraint for the SID–IIs. In addition, the Alliance requested changes to various provisions of the NCAP side impact test procedure.

III. Response to Petition

a. Location of the Seat on the Non-Impact Side; Correcting Amendment Background

Prior to the September 1, 2007 final rule, the test procedure for the MDB test in FMVSS No. 214 (S6.3) specified that, when using the SID, "Adjustable seats are placed in the adjustment position *midway* between the forward most and rearmost positions. * * *" (Emphasis added.) NCAP currently has the same specification for the adult male test dummy in the MDB test.

The September 1, 2007 final rule included the following specification for front seat adjustment in the MDB test using the ES–2re dummy (S8.3.1.3): "If the passenger seat does not adjust independently of the driver seat, the driver seat shall control the final position of the passenger seat." [2]

If the passenger seat adjusts independently of the driver seat, the final rule was silent on specifying a seat positioning procedure for the non-impacted (or "non-struck") side of the vehicle.

In a petition for reconsideration of the September 1, 2007 final rule, the Alliance recommended "adding a section that adopts the current FMVSS 214 seat position of the non-impacted side when the driver and passenger seats move independently of each other, which places the front seat on the non-impacted [side] at the same fore/aft location as the struck-side seat." [3] In response, NHTSA stated in the March 15, 2010 final rule preamble that "[W]e agree with the Alliance that the seat on the non-struck side should be aligned with the impacted seat, with regard to two adjacent seats with the ability to adjust independently of each other." However, no regulatory text change was made by the March 15, 2010 final rule.

Petition

The Alliance requests in its April 29, 2010 petition for reconsideration that NHTSA amend S8.3.1.3 (testing with the ES–2re) to add the sentence: "If the passenger seat adjusts independently of the driver seat, the fore/aft location of the seat on the non-struck side shall be aligned with the fore/aft location of the seat on the struck side." The Alliance also requests the provision be placed in the regulatory text pertaining to the MDB test that specifies adjustment of the second row seats when tested with the SID–IIs (S8.3.3.3) and in the pole test for adjusting front row seats with the SID–IIs test dummy (S10.3.2.3).

Agency Response: We are clarifying our statement in the preamble to the March 15, 2010 final rule. In doing so, we are mainly denying the Alliance's requests.

When we agreed in the March 15, 2010 preamble that the seat on the non-struck side should indeed be "aligned" with the impacted seat (75 FR at 12131), we were referring to vehicles in which the driver seat and the front passenger seat have the same seat track configuration (length and relative fore-aft position in the vehicle). Thus, the driver seat and the passenger seat would be set up mid-track and both seats would be "aligned."

It was our intention that the driver seat and the front passenger seat be in the mid-track position when positioning the 50th percentile adult male dummy in FMVSS No. 214 tests, as it has been done historically. FMVSS No. 214 has always used the mid-track position when positioning the SID dummy in the MDB test.[4] NCAP currently specifies using the mid-track position when positioning the ES–2re 50th percentile adult male dummy in the side impact MDB test.[5] NHTSA did not intend to change that mid-track specification in FMVSS No. 214 and in NCAP when testing with the 50th percentile adult male test dummies.

If the driver seat track and the front passenger seat track are the same length, and relative fore-aft position in the vehicle, and if the driver and front passenger seats are similar in shape and configuration, "aligning" the seats would result in both being positioned mid-track. However, if the tracks are different lengths, have a different fore-aft location, or if the seats differ in shape, the mid-track positions may differ and it is unclear what "aligning" the seats on the struck side and non-struck side means. For these reasons, in retrospect, we do not believe the term "aligned" should be used to describe how the seats on the struck side and non-struck side should be set up. Instead, we will clarify S8.3.1.3 to specify that if the passenger seat adjusts independently of the driver seat, the procedures of S8.3.1 will be used to position the driver seat and the passenger seat.[6] That is, the seats will be in the mid-track position.

It was also our intention that, for the pole test, the front seat in which the SID–IIs 5th percentile adult female test dummy is placed will be in the most forward position (S10.3.2.3.2). NCAP currently specifies using the most forward position.[7] If the tracks for the driver seat and for the front passenger seat are of different lengths or relative position, the forward-most position will differ. If such seats were to be "aligned," one of the seats may not be in its forward-most position, which is contrary to our intent. Use of the "aligned" concept also introduces imprecision into the standard as to the meaning of the term as applied to two seats of dissimilar dimension, which we wish to avoid.

We thus deny the Alliance's specific request. However, we will clarify S10.3.2.3 to specify that if the passenger seat adjusts independently of the driver seat, the procedures of S10.3.2 will be used to position each seat. That means that the front seats will be positioned full-forward when testing with the SID–II (see S10.3.2.3.2).

For the reasons explained above, we also deny the Alliance's suggestion to incorporate the "aligned" concept in S8.3.3.3. This section specifies how to position an adjustable second row seat for a SID–IIs 5th percentile adult female test dummy in the MDB test. Under

[1] At the time of the petition, the Alliance consisted of BMW group, Chrysler Group LLC, Ford Motor Company, General Motors LLC, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

[2] In S8.3.1.3.2, the first sentence states: "Using only the control that primarily moves the seat fore and aft, move the seat cushion reference point to the mid travel position. * * *"

[3] Docket No. NHTSA–2007–29134–008, p. 20.

[4] See general provision, S6.3 of FMVSS No. 214, before the 2007 final rule: "*Adjustable seats.* Adjustable seats are placed in the adjustment position midway between the forward most and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position." See also NHTSA's FMVSS No. 214 Test Procedure manual with the SID dummy states: "Adjustable seats (on the impact and non-impact side) are placed in the adjustment position midway between the forward most and rearmost position. * * *" TP214D–08 Part l, K: Adjustable Seats.

[5] Docket No. NHTSA–2008–0141–0016, pages 40–41.

[6] Clarifying S8.3.1.3 will also clarify the pole test procedure with the 50th percentile male dummy. Section S10.3.1 of FMVSS No. 214 specifies that when conducting the pole test with the ES–2re dummy, the driver and front passenger seats are set up as specified in S8.3.1.

[7] Docket No. NHTSA–2008–0141–0015, page 30.

S8.3.3.3, the struck side is adjusted to its full down, full rearward position. We will revise S8.3.3.3 so that it applies to a non-struck seat that adjusts independently of the struck seat. This means that, in an MDB test, adjustable second row seats being tested will be placed full down, full rearward.

b. SID–IIs Lower Neck Bracket Adjustment

The March 15, 2010 final rule added the following sentence to the end of S12.3.2(a)(9) for positioning the dummy in the driver's seat: "Adjust the lower neck bracket to level the head as much as possible." This was in response to an Alliance petition for reconsideration on the September 2007 final rule. The purpose of the amendment was to clarify that the lower neck bracket may be used to position the dummy's head if the adjustable seat back cannot achieve the ± 0.5 degree tolerance for head leveling.

In its petition for reconsideration of the March 15, 2010 final rule, the Alliance suggested the new sentence that was added to S12.3.2(a)(9) should be added to the dummy positioning procedures for both the front and rear seat passengers in S12.3.3(a)(9) and S12.3.4(h), respectively, to keep the head leveling procedure consistent in all seating positions. The Alliance further suggested that S12.3.2(a)(10), S12.3.3(a)(10) and S12.3.4(i) are unnecessary, if the new sentence is added as the petitioner suggested, and should be deleted.

Agency Response: We generally agree with the request, but there are aspects with which we do not entirely concur.

We agree that there is some unneeded overlap between S12.3.2(a)(9), adopted by the March 2010 final rule, and S12.3.2(a)(10). Therefore, we have decided to more fully integrate the two sections into a revised S12.3.2(a)(9). The revised section clarifies the head leveling procedure for all seat types (i.e., seats with adjustable seat backs and those with non-adjustable seat backs). The instruction that was in S12.3.2(a)(10) (to "minimize the angle") has not been deleted but is now integrated into the procedures of S12.3.2(a)(9).

Specifications that were related to steering wheel interaction that were previously part of S12.3.2(a)(9) are now moved to S12.3.2(a)(10). Section S12.3.2(a)(11) is changed to remove a reference to S12.3.2(a)(10). S12.3.2(a)(12) remains unchanged.

We also agree with the Alliance's suggestion that the specification—that the lower neck bracket could be used to level the head—should also be included in the procedures for positioning the front passenger dummy (S12.3.3(a)(9)) and the rear dummy (S12.3.4(h)). The instruction is reasonable because it better ensures that the dummy's head can be leveled. Accordingly, we have incorporated the specification in the head leveling procedures of those two sections, along with clarifying the head leveling procedures. Yet, as noted above for S12.3.2(a)(10), the instruction that was in S12.3.3(a)(9) and S12.3.4(h) (to "minimize the angle") has not been deleted but is now integrated into the procedures of S12.3.3(a)(9) and S12.3.4(h). The remainder of S12.3.3(a) and S12.3.4 remain basically the same. Our changes are consistent with the Alliance's request, while not a verbatim implementation of it.

c. SID–IIs Head Restraint Position

In the March 2010 final rule, the agency agreed with the Alliance that the potential exists where the lowest possible detent position may not be the lowest possible position for the head restraint adjustment. It was the agency's intent to position the head restraint in contact with the top of the seat back as the seat back may provide a "stop" for the downward adjustment of the head restraint, just as a detent does at other positions of adjustment. To further clarify the position of the head restraint when testing with the SID–IIs dummy, we revised the standard to state that if it is possible to achieve a position lower than that associated with the detent range, the head restraint will be set to its lowest possible position. The change was consistent with the positioning of head restraints for testing in FMVSS No. 202, "Head restraints." [8]

The Alliance petitioned the agency to make clear that we were referring to in-use positions and not stowed positions, to be consistent with the NCAP test procedure. The NCAP laboratory test procedure states that the head restraint is to be placed at its lowest and most full forward in-use position, not including stowed positions.[9]

Agency Response: We are granting the request to specify in the regulatory text (S8.3.3.2 and S10.3.2.2) that the allowable positions of head restraint adjustment excludes non-use positions. "Non-use positions" are as specified by S4.4 of FMVSS No. 202a, "Head restraints." Under this section of FMVSS No. 202a, there are three kinds of non-use positions under which it is not necessary to meet the minimum head restraint height requirement. This change will provide greater clarity when positioning the head restraint when testing with the SID–IIs dummy.

d. Changes to the NCAP Test Procedures

In addition to the requested changes in its petition for reconsideration of the FMVSS No. 214 final rule, the Alliance requested changes to NCAP's side impact test procedure. Changes were suggested for the positioning of the SID–IIs in vehicles with small rear seats and the seat adjustment procedure for the SID–IIs, in addition to other issues.

Agency Response: The purpose of this final rule is to address the petition for reconsideration related to the FMVSS No. 214 rulemaking. The Alliance's suggestions related to the NCAP test procedure will be addressed separately and in the context of that program. A copy of the agency's response to these issues is included in the docket for the NCAP test procedure, Docket No. NHTSA–2008–0141.

IV. Corrections

The agency has learned of the following technical errors that are in need of correction. These are corrected by today's document.

a. Deleted Text

In the 2010 final rule the agency modified S12.2.1 to address petitions on shoulder belt anchorage positioning for the ES-2re. In so doing, we inadvertently removed S12.2.1(a)–(d). Today we are restoring those sections to the standard.

b. Hm Stamp

Section S12.2.1(b)(2) (as set forth in the September 11, 2007 final rule) stated that the correct position of the dummy pelvis may be checked relative to the H-point of the H-point Manikin by using the "M3 holes" in the ES-2re pelvis. In the last two sentences of S12.2.1(b)(2), there was a statement that the M3 holes are indicated with an "Hm" stamp and a statement as to where the Hm stamp may be found on the dummy. These statements were in error because 49 CFR part 572 subpart U does not require the Hm stamp to be marked on the ES-2re dummy. Further, the test dummy can be positioned without the stamp, so there was no need for the reference to the stamp.

Accordingly, as noted above, while today's document maintains the first

[8] We note that for a certain compliance option, FMVSS No. 202 measures the height of the head restraint when adjusted to its lowest position. In a 2007 letter to the Lear Corporation, the agency interpreted this position to potentially be the position that the head restraint is in when it is in contact with the top of the seat back and below the lowest adjustment detent. A copy of this letter can be found on the NHTSA Web site at *http://isearch.nhtsa.gov/files/07-001357drn.htm.*

[9] Docket Nos. NHTSA–2008–0141–0015, page 31 and NHTSA–2008–0141–0016, page 41.

sentence of S12.2.1(b)(2), we have edited the remainder of the section by removing the statements concerning the Hm stamp.

c. Seat Back Adjustment

While reviewing the Alliance's petition, the agency saw a need for the following correction. S8.3.3.2 and S10.3.2.2 state that for seats with adjustable seat backs, the seat back is adjusted to the manufacturer's nominal design riding position, or if not specified, the first detent rearward of 25 degrees from the vertical. We have determined that the seat back adjustment provisions specified in S8.3.3.2 and S10.3.2.2 are unnecessary in the test procedure since the seat back is fully reclined in S12.3.3(2) and S12.3.4(b), prior to placement of the test dummy in the seat. Therefore, we have deleted the last two sentences in S8.3.3.2 and 10.3.2.2. We believe this change will have no effect on the MDB or pole test.

d. Typographical Errors

In S5(a)(1), the reference to "S8.4" is in error. S8.4 is the steering wheel adjustment procedure. We are replacing the reference to S8.4 with a reference to "S8.3." S8.3 is the appropriate section for seat back adjustment procedures.

In S12.3.3(b)(3), the last word ("possible") is missing ("* * * place the lower leg as perpendicular to the thigh as possible"). We are correcting the text.

V. Rulemaking Analyses and Notices

Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has also been determined to be not significant under the Department's regulatory policies and procedures.

This document corrects or clarifies aspects of the test procedures specified by the September 11, 2007 and March 15, 2010 final rules or makes minor adjustments to those procedures. The minimal impacts of today's amendment do not warrant preparation of a regulatory evaluation.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not significantly affect small manufacturers since it simply corrects or clarifies aspects of the test procedures specified by the September 11, 2007 and March 15, 2010 final rules, or makes minor adjustments to those procedures. Small organizations and small governmental units will not be significantly affected since there are not likely to be any cost impacts associated with this action on the price of new motor vehicles.

Executive Order 13132 (Federalism)

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e) Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend that this final rule would preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard proposed here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal

governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995). This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows.

The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act (PRA)

Under the PRA of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule has no "collections of information" (as defined at 5 CFR 1320.3(c)).

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA)(Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical-standards as a means to carry out policy objectives or activities determined by the agencies and departments.

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, such as the International Organization for Standardization (ISO) and the Society of Automotive Engineers. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards applicable to this final rule.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us with your views.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.214 is amended by:
■ a. Revising S5(a)(1), S8.3.1.3, S8.3.3.2, S8.3.3.3, S10.3.2.2, and S10.3.2.3;
■ b. Adding S12.2.1(a) through S12.2.1(d)(2); and,
■ c. Revising S12.3.2(a)(9), S12.3.2(a)(10), S12.3.2(a)(11); S12.3.3(a)(9), S12.3.3(a)(10), S12.3.3(a)(11), S12.3.3(b)(3), and S12.3.4(h); and,
■ d. Removing S12.3.3(a)(12).

The added and amended text read as follows:

§ 571.214 Standard No. 214; Side impact protection.

* * * * *

S5 *General exclusions.*

(a) * * *

(1) Any side door located so that no point on a ten-inch horizontal longitudinal line passing through and bisected by the H-point of a manikin placed in any seat, with the seat adjusted to any position and the seat back adjusted as specified in S8.3, falls within the transverse, horizontal projection of the door's opening,

* * * * *

S8.3.1.3 *Seat position adjustment.* If the driver and passenger seats do not adjust independently of each other, the struck side seat shall control the final position of the non-struck side seat. If the driver and passenger seats adjust independently of each other, adjust both the struck and non-struck side seats in the manner specified in S8.3.1.

* * * * *

S8.3.3.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or non-deployed adjustment position. Position any adjustable head restraint in the lowest and most forward in-use position. If it is possible to achieve a position lower than the effective detent range, the head restraint should be set to its lowest possible position. A non-use position as specified by S4.4 of FMVSS No. 202a, is excluded from being considered as the lowest possible position.

* * * * *

S8.3.3.3 *Seat position adjustment.* Using only the controls that primarily move the seat and seat cushion independent of the seat back in the fore and aft directions, move the seat cushion reference point (SCRP) to the rearmost position. Using any part of any control, other than those just used, determine the full range of angles of the seat cushion reference line and set the seat cushion reference line to the middle of the range. Using any part of any control other than those that primarily move the seat or seat cushion fore and aft, while maintaining the seat cushion reference line angle, place the SCRP to its lowest position. Mark location of the seat for future reference. If the non-struck side seat adjusts independently of the struck side seat,

adjust the seat in the manner specified in this section.

* * * * *

S10.3.2.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or non-deployed adjustment position. Position any adjustable head restraint in the lowest and most forward in-use position. If it is possible to achieve a position lower than the effective detent range, the head restraint should be set to its lowest possible position. A non-use position as specified by S4.4 of FMVSS No. 202a, is excluded from being considered as the lowest possible position.

* * * * *

S10.3.2.3 *Seat position adjustment.* If the driver and passenger seats do not adjust independently of each other, the struck side seat shall control the final position of the non-struck side seat. If the driver and passenger seats adjust independently of each other, adjust both the struck and non-struck side seats in the manner specified in S10.3.2.

* * * * *

S12.2.1 * * *

(a) *Upper torso.*

(1) The plane of symmetry of the dummy coincides with the vertical median plane of the specified seating position.

(2) Bend the upper torso forward and then lay it back against the seat back. Set the shoulders of the dummy fully rearward.

(b) *Pelvis.* Position the pelvis of the dummy according to the following:

(1) Position the pelvis of the dummy such that a lateral line passing through the dummy H-points is perpendicular to the longitudinal center plane of the seat. The line through the dummy H-points is horizontal with a maximum inclination of ± 2 degrees. The dummy may be equipped with tilt sensors in the thorax and the pelvis. These instruments can help to obtain the desired position.

(2) The correct position of the dummy pelvis may be checked relative to the H-point of the H-point Manikin by using the M3 holes in the H-point back plates at each side of the ES–2re pelvis. Position the dummy such that the M3 holes are located within a circle of radius 10 mm (0.39 in.) around the H-point of the H-point Manikin.

(c) *Arms.* For the driver seating position and for the front outboard passenger seating position, place the dummy's upper arms such that the angle between the projection of the arm centerline on the mid-sagittal plane of the dummy and the torso reference line is 40° ± 5°. The torso reference line is defined as the thoracic spine centerline. The shoulder-arm joint allows for discrete arm positions at 0, 40, and 90 degree settings forward of the spine.

(d) *Legs and Feet.* Position the legs and feet of the dummy according to the following:

(1) For the driver's seating position, without inducing pelvis or torso movement, place the right foot of the dummy on the un-pressed accelerator pedal with the heel resting as far forward as possible on the floor pan. Set the left foot perpendicular to the lower leg with the heel resting on the floor pan in the same lateral line as the right heel. Set the knees of the dummy such that their outside surfaces are 150 ± 10 mm (5.9 ± 0.4 inches) from the plane of symmetry of the dummy. If possible within these constraints, place the thighs of the dummy in contact with the seat cushion.

(2) For other seating positions, without inducing pelvis or torso movement, place the heels of the dummy as far forward as possible on the floor pan without compressing the seat cushion more than the compression due to the weight of the leg. Set the knees of the dummy such that their outside surfaces are 150 ± 10 mm (5.9 ± 0.4 inches) from the plane of symmetry of the dummy.

* * * * *

S12.3.2 *5th percentile female driver dummy positioning.*

(a) *Driver torso/head/seat back angle positioning.*

* * * * *

(9) *Head leveling.*

(i) *Vehicles with fixed seat backs.* Adjust the lower neck bracket to level the transverse instrumentation platform angle of the head to within ± 0.5 degrees. If it is not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the neck bracket adjustment position that minimizes the difference between the transverse instrumentation platform angle and level.

(ii) *Vehicles with adjustable seat backs.* While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform angle of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bight. (If the torso contacts the steering wheel, use S12.3.2(a)(10) before proceeding with the remaining portion of this paragraph.) If it is not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the seat back adjustment position that minimizes the difference between the transverse instrumentation platform angle and level, then adjust the neck bracket to level the transverse instrumentation platform angle to within ± 0.5 degrees if possible. If it is still not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the neck bracket angle position that minimizes the difference between the transverse instrumentation platform angle and level.

(10) If the torso contacts the steering wheel, adjust the steering wheel in the following order until there is no contact: telescoping adjustment, lowering adjustment, raising adjustment. If the vehicle has no adjustments or contact with the steering wheel cannot be eliminated by adjustment, position the seat at the next detent where there is no contact with the steering wheel as adjusted in S10.5. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the steering wheel as adjusted in S10.5 and the point of contact on the dummy.

(11) Measure and set the dummy's pelvic angle using the pelvic angle gage. The angle is set to 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible by adjustments specified in S12.3.2(a)(9).

* * * * *

S12.3.3 *5th percentile female front passenger dummy positioning.*

(a) *Passenger torso/head/seat back angle positioning.*

* * * * *

(9) *Head leveling.*

(i) *Vehicles with fixed seat backs.* Adjust the lower neck bracket to level the transverse instrumentation platform angle of the head to within ± 0.5 degrees. If it is not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the neck bracket adjustment position that minimizes the difference between the transverse instrumentation platform angle and level.

(ii) *Vehicles with adjustable seat backs.* While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform angle of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bight. If it is not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the seat back adjustment position that minimizes the difference between the transverse instrumentation platform angle and level, then adjust the neck bracket to level the transverse instrumentation platform angle to within ± 0.5 degrees if possible. If it is

still not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the neck bracket angle position that minimizes the difference between the transverse instrumentation platform angle and level.

(10) Measure and set the dummy's pelvic angle using the pelvic angle gage. The angle is set to 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible by adjustments specified in S12.3.2(a)(9).

(11) If the dummy is contacting the vehicle interior after these adjustments, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments, the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forwardmost position, move the seat forward until the contact point is 5 mm (0.2 in) or less from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position without making contact, or until the seat reaches its forwardmost position, whichever occurs first.

(b) *Passenger foot positioning.*

* * * * *

(3) If either foot does not contact the floor pan, place the foot parallel to the floor pan and place the lower leg as perpendicular to the thigh as possible.

* * * * *

S12.3.4 *5th percentile female in rear outboard seating positions.*

* * * * *

(h) Head leveling.

(1) Vehicles with fixed seat backs. Adjust the lower neck bracket to level the transverse instrumentation platform angle of the head to within ± 0.5 degrees. If it is not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the neck bracket adjustment position that minimizes the difference between the transverse instrumentation platform angle and level.

(2) Vehicles with adjustable seat backs. While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform angle of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bight. If it is not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the seat back adjustment position that minimizes the difference between the transverse instrumentation platform angle and level, then adjust the neck bracket to level the transverse instrumentation platform angle to within ± 0.5 degrees if possible. If it is still not possible to level the transverse instrumentation platform to within ± 0.5 degrees, select the neck bracket angle position that minimizes the difference between the transverse instrumentation platform angle and level.

* * * * *

Issued on: August 18, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–21666 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132–1275–02]

RIN 0648–XA630

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted from one to three large medium or giant BFT for the September, October-November, and December time periods of the 2011 fishing year, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels (when fishing commercially for BFT).

DATES: Effective September 1, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, consistent with the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and subsequent rulemaking.

The 2011 BFT fishing year began on January 1, 2011, and ends December 31, 2011. The 2011 BFT quota specifications (76 FR 39019, July 5, 2011) established a quota of 435.1 mt for the General category fishery (the commercial tunas fishery in which handgear is used). Each of the General category time periods (January, June–August, September, October–November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities in years when catch rates are high and quota is available. The General category fishery is open until December 31, 2011, or until the General category quota is reached.

Adjustment of General Category Daily Retention Limit

Starting on September 1, the General category daily retention limit (§ 635.23(a)(2)), is scheduled to revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length or greater) per vessel per day/trip. This default retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing

trends, and the availability of the BFT on the fishing grounds.

For the 2010 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: Two large medium or giant BFT for January (74 FR 68709, December 29, 2009), and three large medium or giant BFT for June through December (75 FR 30730, June 2, 2010; and 75 FR 51182, August 19, 2010). For the 2011 fishing year, NMFS adjusted the January limit to two large medium or giant BFT (75 FR 79309, December 20, 2010), and adjusted the June through August limit to three large medium or giant BFT (76 FR 32086, June 3, 2011).

Despite an elevated three-fish daily retention limit, 2011 General category landings remain low. As of August 8, 2011, 86.9 mt of the 2011 General category quota of 435.1 mt have been landed, and landings rates remain at approximately 1 mt per day. Given the rollover of unused quota from the January and June-August time periods, current catch rates, and the fact that the daily retention limit will automatically revert to one large medium or giant BFT per vessel per day on September 1, 2011, absent agency action, NMFS anticipates the full 2011 General category quota will not be harvested. Increasing the daily retention limit from the default of one fish may mitigate rolling an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota.

Based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that the General category retention limit should be adjusted to allow for retention of the anticipated 2011 General category quota, and that the same approach used for September through December 2010 is warranted. Therefore, NMFS increases the General category retention limit from the default limit to three large medium or giant BFT per vessel per day/trip effective September 1, 2011, through December 31, 2011. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities; to help achieve optimum yield in the General category BFT fishery; to collect a broad range of data for stock monitoring purposes; and to be consistent with the objectives of the Consolidated HMS FMP.

Monitoring and Reporting

NMFS selected the daily retention limit for September–December 2011 after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates in the BFT fisheries, quota availability, previous public comments on inseason management measures, and stock status. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. NMFS will address the January 2012 General category daily retention limit via a separate inseason action later in the year, if necessary.

Closure of the General category or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *http://www.hmspermits.gov*, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen who depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective September 1, 2011, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (*i.e.*, the default General category retention limit is one fish per vessel per day/trip whereas this action increases that limit and allows retention of additional fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 18, 2011.

Galen R. Tromble,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–21651 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 100218104–1485–02]

RIN 0648–AY27

Western Pacific Pelagic Fisheries; American Samoa Longline Gear Modifications To Reduce Turtle Interactions

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

ACTION: Final rule.

SUMMARY: This rule requires specific gear configuration for pelagic longline fishing in the South Pacific. The requirements apply to U.S. vessels longer than 40 ft (12.2 m) while fishing south of the Equator, and include minimum float line and branch line lengths, number of hooks between floats, and distance between floats and adjacent hooks. The rule also limits the number of swordfish taken. The action is intended to ensure that longline hooks fish deeper than 100 meters (m) to reduce interactions with Pacific green sea turtles. This final rule also makes administrative clarifications to the names of several tunas and marlins.

DATES: This final rule is effective September 23, 2011.

ADDRESSES: The Western Pacific Fishery Management Council (Council) prepared Amendment 5 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP), including an environmental assessment, that presents background information on this rule. The Pelagics FEP and Amendment 5 are available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *http://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Adam Bailey, Sustainable Fisheries Division, NMFS PIR, 808–944–2248.

SUPPLEMENTARY INFORMATION: The U.S. pelagic longline fishery based in American Samoa targets albacore for canning in Pago Pago, and also catches skipjack, yellowfin, and bigeye tunas, and other pelagic fish. The fishery interacts with (hooks or entangles) Pacific green sea turtles, which are listed as threatened under the Endangered Species Act (ESA). Most of the turtle interactions occur in waters shallower than 100 m, and most are fatal. To reduce these interactions, the Council recommended in Amendment 5 that NMFS require fishermen on American Samoa longline vessels and other U.S. longline vessels that fish south of the Equator to configure their fishing gear so that longline hooks are set to fish deeper than 100 meters, away from the primary turtle habitat. Accordingly, this final rule requires fishermen on vessels longer than 40 ft to use float lines that are at least 30 meters long, and maintain a distance between float lines and adjacent branch lines with hooks of at least 70 meters. Fishermen on these longer vessels are required to deploy at least 15 branch lines between floats. The possession or landing of more than 10 swordfish, which tend to inhabit near-surface waters, is prohibited as another means of discouraging shallow longlining.

Another requirement was not part of Amendment 5. In a September 16, 2010, Biological Opinion resulting from ESA Section 7 consultation, NMFS issued a requirement that each branch line (connected to the main line and terminating in a single baited hook) be at least 10 meters long to help ensure that hooks fish deeper than 100 m from the surface. This final rule implements that requirement.

This final rule also makes administrative clarifications to the names of several tuna and marlin species caught in western Pacific pelagic fisheries.

Comments and Responses

On June 7, 2011, NMFS published a proposed rule and request for public comments (76 FR 32929); the comment ended on July 22, 2011. Additional background information on this final rule is found in the preamble to the proposed rule and is not repeated here. NMFS responds to comments, as follows.

Comment 1: The use of short float lines or branch lines to catch swordfish should be prohibited to facilitate enforcement.

Response: NMFS agrees and, thus, both the proposed rule and this final rule require U.S. longline vessels fishing south of the Equator to use float lines at least 30 m long and branch lines at least 10 m long to reduce interactions with Pacific green sea turtles. Because swordfish typically are caught near the surface, the gear requirements will discourage shallow longline fishing for swordfish, resulting in additional protection for turtles. NMFS is also limiting the number of swordfish that can be retained on a longline vessel to 10 to further discourage shallow longline fishing.

Comment 2: One commenter asked if the rule would allow fishermen to shorten float lines by tying knots in the lines.

Response: The rule requires float lines to be at least 30 m long. Although a fisherman could shorten a float line by, for example, tying knots in the line, NMFS clarifies that the requirement is for the float line to be at least 30 m long while deployed. Float lines must not be shortened so their effective length when deployed is less than 30 m. This is part of the overall gear configuration that is intended to have the hooks fish deeper than 100 m, and shortening a float line could result in hooks fishing shallower than 100 m, with a resulting increase in risk to turtles.

Comment 3: Small longline vessels (Class A, 40 ft (12.2 m) and shorter), which are not included in this action, might be interacting with turtles.

Response: There is little information on interactions between these smaller longline vessels (alia) and sea turtles. From 1990–2002, the Secretariat of the Pacific Community (then the South Pacific Commission) deployed observers on alia in (Western, or independent) Samoa; during this time, no sea turtle interactions were observed. In 2003–04, data collectors aboard a high-producing alia in American Samoa also reported no interactions with sea turtles, seabirds, or marine mammals. To date, only one sea turtle interaction has been reported in the American Samoa alia fishery, and this was with a leatherback sea turtle.

Class A vessels are small and the fishing gear is technologically simple. Thus, the float line length requirement may be unduly burdensome and restrict a vessel's fishing operations. Few alia have been operational in recent years, with no expected change. Two alia operated in 2007 and only one fished in 2008–09. If the Class A fishery becomes more active, or if these small vessels are found to interact with turtles, the Council and NMFS may revisit management of Class A vessels.

Changes From the Proposed Rule

There are no changes in the final rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that Pelagic FEP Amendment 5 is necessary for the conservation and management of the pelagic longline fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the

Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Sea turtles.

Dated: August 19, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.800, add the definitions of "Branch line" and "Float line" in alphabetical order, and in the definition of "Western Pacific pelagic management unit species" remove the entries for "northern bluefin tuna" and "Indo-Pacific blue marlin," revise the scientific names for "black marlin" and "striped marlin," and add new entries for "Pacific bluefin tuna" and "Pacific blue marlin," to read as follows:

§ 665.800 Definitions.

* * * * *

Branch line (or *dropper line*) means a line with a hook that is attached to the mainline.

* * * * *

Float line means a line attached to a mainline used to buoy, or suspend, the mainline in the water column.

* * * * *

Western Pacific pelagic management unit species means the following species:

English common name	Scientific name
Tunas:	
* * *	
Pacific bluefin tuna ...	*Thunnus orientalis*
* * *	
Billfishes:	
Black marlin	*Istiompax indica*
Striped marlin	*Kajikia audax*
Pacific blue marlin	*Makaira nigricans*
* * *	

■ 3. In § 665.802, add a new paragraph (n) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(n) Fail to comply with a term or condition governing longline gear configuration in § 665.813(k) if using a vessel longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to § 665.801 to fish for western Pacific pelagic MUS using longline gear south of the Equator (0° lat.).

* * * * *

■ 4. In § 665.813, add a new paragraph (k) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(k) When fishing south of the Equator (0° lat.) for western Pacific pelagic MUS, owners and operators of vessels longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to § 665.801 must use longline gear that is configured according to the requirements in paragraphs (k)(1) through (k)(5) of this section.

(1) Each float line must be at least 30 m long.

(2) At least 15 branch lines must be attached to the mainline between any two float lines attached to the mainline.

(3) Each branch line must be at least 10 meters long.

(4) No branch line may be attached to the mainline closer than 70 meters to any float line.

(5) No more than 10 swordfish may be possessed or landed during a single fishing trip.

[FR Doc. 2011–21655 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 164
Wednesday, August 24, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Part 100

19 CFR Part 101

[Docket No. USCBP–2011–0017]

Closing of the Port of Whitetail, MT

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: U.S. Customs and Border Protection (CBP) is proposing to close the port of entry of Whitetail, Montana. The proposed change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: You may submit comments, identified by docket number USCBP–2011–0017, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP–2011–0017. 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, 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.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Kaplan, Acting Director, Office of Field Operations, Audits and Self-Inspection, (202) 325–4543 (not a toll-free number) or by e-mail at *Roger.Kaplan@dhs.gov.*

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 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

CBP ports of entry are locations where CBP officers and employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of customs, immigration, agriculture and related U.S. laws at the border. The term "port of entry" is used in the Code of Federal Regulations (CFR) in title 8 for immigration purposes and in title 19 for customs purposes. For customs purposes, CBP regulations list designated CBP ports of entry in section 101.3(b)(1) of title 19. 19 CFR 101.3(b)(1).

For immigration purposes, CBP regulations list ports of entry for aliens arriving by vessel and land transportation in section 100.4(a) of title 8. 8 CFR 100.4(a). These ports are listed according to location by districts and are designated as Class A, B, or C. Whitetail, Montana is included in this list, in District No. 30, as a Class A port of entry, meaning a port that is designated as a port of entry for all aliens arriving by vessel and land transportation.[1]

On July 20, 2010, the Canada Border Services Agency (CBSA) notified CBP of its intent to close the Big Beaver port of entry in Saskatchewan, Canada. The port of Big Beaver is located approximately 100 yards to the north of the CBP port of Whitetail, Montana. The factors influencing CBSA's decision to close the port of Big Beaver include the low volume of traffic at that port and the close proximity of alternate Canadian ports of entry at Regway and Coronach. Based on these factors, CBSA determined that closing the Big Beaver port would allow for a more efficient use of Canadian funds and resources.

CBSA closed the Big Beaver port on April 1, 2011. Big Beaver's closure has created a situation where travelers from Canada may continue to enter the United States at Whitetail but travelers leaving the United States for Canada must do so at a port other than Big Beaver.

The port of Whitetail is one of CBP's least trafficked ports. The port has processed an average of less than 4 privately owned vehicles per day for the last 4 years. Whitetail currently operates only from morning until evening (8 a.m. through 9 p.m. during the months of June through September; 9 a.m. through 6 pm during the months of September through May). The facility was built in 1964 and has undergone little renovation since that time. CBP has determined that the facility does not have the infrastructure to meet modern operational, safety, and technological demands for ports of entry and that major renovations would be required if Whitetail were to continue operations. The costs of such renovations are discussed in Section IV of this document.

The two ports of entry closest to Whitetail are the ports of Raymond,

[1] Class B ports are designated ports of entry for aliens arriving by vessel or land transportation, who, at the time of applying for admission, are in possession of certain, specified documentation or admissible under a certain documentary waiver. Class C ports are designated ports of entry only for aliens arriving by vessel transportation as crewmen, as the term is defined by the Immigration and Nationality Act with respect to vessels.

Montana and Scobey, Montana. Raymond is located about 60 miles east of Whitetail, and Scobey is located about 40 miles west of Whitetail. If the port of entry at Whitetail is closed, the traffic normally seen at that port will be processed at these two ports. The port of Raymond operates 24 hours, providing additional convenience to those normally crossing at the port of Whitetail.

In view of the closure of the adjacent Canadian port of Big Beaver, the limited usage of the port of Whitetail, the location of the alternative ports, and the analysis of the net benefit of the port closure discussed in Section IV of this document (including the cost of necessary renovations were the port to remain open), CBP is proposing to close the Whitetail, Montana, port of entry to better utilize CBP funds and resources. This action would further CBP's ongoing goal of more efficiently utilizing its personnel, facilities, and resources.

Consultations/Assessments

CBP will conduct further assessments focusing on how to secure the area, reroute traffic to the closest ports, and calculate any additional costs associated with the potential port closure. CBP also will consult and coordinate with CBSA and the Montana Department of Transportation regarding the planned closure. CBP is currently conducting the initial phases of an environmental study to ensure that the proposed port closure complies with applicable environmental laws such as the National Environmental Policy Act of 1969 (NEPA).

III. Congressional Notification

On September 28, 2010, the Commissioner of CBP notified Congress of CBP's intention to close the port of entry at Whitetail, Montana, fulfilling the congressional notification requirements of 19 U.S.C. 2075(g)(2) and section 417 of the Homeland Security Act (6 U.S.C. 217).

IV. Regulatory Requirements

A. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, this notice of proposed rulemaking is signed by the Secretary of Homeland Security.

B. Executive Order 12866: Regulatory Planning and Review

This rule is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563, and has not been reviewed by the Office of Management and Budget (OMB) under that order. Below is CBP's assessment of the benefits and costs of this regulatory action.

1. Baseline Conditions

Whitetail averaged 1,261 cars and 57 trucks a year from 2007 to 2009. CBP assigns four full time staff to the crossing, costing about $457,000 per year, including benefits. In addition, CBP spends about $35,000 a year on operating expenses such as utilities and maintenance. The total annual cost of operating the crossing is about $492,000. DHS has determined that the Whitetail port of entry requires significant renovation and expansion, requiring an estimated $8 million to build facilities that meet all current safety and security standards. Since this construction is the only alternative to closing the crossing, CBP would spend about $8.5 million the first year (construction plus operating costs) and $0.5 million each subsequent year if the crossing were to remain open.

2. Costs of Closing the Port

The costs of the proposed closure fall into three categories—the cost to CBP to physically close the port, the cost to U.S. travelers entering the United States to drive to the next nearest port, and the cost to the economy of lost revenue resulting from potential decreased Canadian travel. CBP estimates that it will cost approximately $158,000 to physically close the port, which involves building road barricades, boarding up the building, and managing asbestos.

In addition to the cost to the government of closing the port, we must examine the impact of this proposed closing on U.S. travelers (per guidance provided in OMB Circular A–4, this analysis is focused on costs and benefits to U.S. entities). Approximately 1,318 vehicles and 2,571 passengers cross from Canada into the United States each year at Whitetail. If the port is closed, these travelers would need to travel to an alternate port, which could cost them both time and money.

As noted, the two ports closest to Whitetail are Raymond, which is about 60 miles east, and Scobey, which is about 40 miles west. The alternate port travelers choose to use will depend on their point of origin and their destination. In general, the closer the point of origin or destination to Whitetail, the more the traveler will be affected by the closure. Because CBP does not collect data on either of these points, for the purposes of this analysis we will assume the worst case scenario—that all crossers begin their trip at a point just across the border from Whitetail and travel to a point just on the U.S. side of the border. We estimate that such a detour would add 1 hour and 40 miles to the crossers' trip. Since it is unlikely that all crossings at Whitetail originate and end immediately at the border, this methodology likely overstates the cost to travelers.

In 2007, Industrial Economics, Inc. (IEc) conducted a study for CBP to develop "an approach for estimating the monetary value of changes in time use for application in [CBP's] analyses of the benefits and costs of major regulations." [2] We follow the three-step approach detailed in IEc's 2007 analysis to monetize the increase in travel time resulting from the closure of Whitetail: (1) Determine the local wage rate, (2) determine the purpose of the trip, and (3) determine the value of the travel delay as a result of this rule. We start using the median hourly wage rate for Montana of $13.65 per hour, as the effects of the rule are local.[3] We next determine the purpose of the trip. For the purposes of this analysis, we assume this travel will be personal travel and will be local travel. We identify the value of time multiplier recommended by the U.S. Department of Transportation (DOT) for personal, local travel, as 0.5.[4] Finally, we account for the value of the travel delay. Since the added time spent traveling is considered more inconvenient than the baseline travel, we account for this by using a factor that weighs time inconvenienced more heavily than baseline travel time. This factor, 1.47, is multiplied by the average wage rate and the DOT value of time multiplier for personal, local travel for a travel time value of $10.04 per traveler ($13.65 × 0.5 × 1.47).[5]

We next multiply the estimated number of travelers entering the U.S. through Whitetail in a year (2,571) by the average delay (1 hour) to arrive at the number of additional hours travelers would be delayed as a result of this rule—2,571 hours. We multiply this by

[2] Robinson, Lisa A. 2007. "Value of Time." Submitted to US Customs and Border Protection on February 15, 2007. The paper is contained in its entirely as Appendix D in the Regulatory Assessment for the April 2008 final rule for the Western Hemisphere Travel Initiative requirements in the land environment (73 FR 18384; April 3, 2008). See *http://www.regulations.gov* document numbers USCBP–2007–0061–0615 and USCBP–2007–0061–0616.

[3] Bureau of Labor Statistics, May 2009. *http://www.bls.gov/oes/current/oes_mt.htm#00-0000.*

[4] U.S. Department of Transportation (DOT), *Revised Departmental Guidance, Valuation of Travel Time in Economic Analysis,* (Memorandum from E. H. Frankel), February 2003, Tables 1.

[5] Wardman, M., "A Review of British Evidence on Time and Service Quality Valuations," *Transportation Research Part E,* Vol. 37, 2001, pp. 107–128.

the value of wait time ($10.04) to arrive at the value of the additional driving time travelers arriving in the United States once Whitetail is closed. Finally, we double this to account for round trip costs to reach a total time cost of $51,626.

Besides the cost of additional travel time, we must consider the vehicle costs of a longer trip. We must first estimate the number of miles the closure of Whitetail would add to travelers' trips. The annual traffic arriving at Whitetail is 1,300 vehicles. Since we assume that the closure will add 40 miles to each crossing, the closure will add a total of 52,000 miles to travelers' trips each year. We next monetize the delay by applying the IRS's standard mileage rate for business travel of $0.50 to these vehicles, which includes fuel costs, wear-and-tear, and depreciation of the vehicle. Because this is an estimate for business travel, it may overstate slightly costs for leisure travelers using their vehicles on leisure activities. Finally, we double the costs to account for the return trip. We estimate that a closure of Whitetail will cost U.S. citizens $52,000 in additional vehicular costs.

The final cost we must consider is the cost to the economy of lost revenue resulting from potential decreased Canadian travel. Because of the lack of data on the nature of travel through Whitetail and its effect on the local economy, we are unable to monetize or quantify these costs. We therefore discuss this qualitatively.

Since both U.S. and foreign travelers will be inconvenienced by the closure of the port of Whitetail, it is possible that fewer foreign travelers will choose to cross the border into the United States. To the extent that these visitors were spending money in the United States, local businesses would lose revenue. Since fewer than four vehicles a day enter the United States at Whitetail, this effect is likely to be very small. Also, these revenue losses could be mitigated by those U.S. citizens who would now choose to remain in the United States. We believe that the total impacts on the economy due to decreased travel to the United States are negligible.

In summary, the closure of the port of Whitetail would cost CBP $158,000 in direct closure costs in the first year, and U.S. travelers $51,626 in time costs and $52,000 in vehicle costs annually. Total costs to close the port are thus approximately $262,000 in the first year and $104,000 each following year.

3. Net Effect of Closure

The costs to CBP of leaving the port of Whitetail open are $8.5 million the first year and $500,000 each following year. The cost of closing the port are $262,000 the first year and $104,000 each following year. Thus, the net benefit of the Whitetail closure is about $8.2 million the first year and $396,000 each year after that.

C. Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. 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 per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Because CBP does not collect data on the number of small businesses that use the port of Whitetail, we cannot estimate how many would be affected by this rule. However, an average of only four vehicles cross into the United States at Whitetail each day, and the total cost of the rule to the public is only about $104,000 a year, even assuming the longest possible detour for all traffic. DHS does not believe that this cost rises to the level of a significant economic impact. DHS thus believes that this rule will not have a significant economic impact on a substantial number of small entities. DHS welcomes any comments regarding this assessment. If it does not receive any comments contradicting this finding, DHS will certify that this rule will not have a significant economic impact on a substantial number of small entities at the final rule stage.

D. Unfunded Mandates Reform Act of 1995

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

E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

V. Authority

This change is proposed under the authority of 5 U.S.C. 301, 6 U.S.C. 112, 203 and 211, 8 U.S.C. 1103 and 19 U.S.C. 2, 66 and 1624.

VI. Proposed Amendment to Regulations

If the proposed closure of the port of Whitetail, Montana, is adopted, CBP will amend the lists of CBP ports of entry at 19 CFR 101.3(b)(1) and 8 CFR 100.4(a) to reflect this change.

Janet Napolitano,

Secretary.

[FR Doc. 2011–21624 Filed 8–23–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2007–BT–STD–0016]

RIN 1904–AB50

Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamp Ballasts

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability and request for public comment.

SUMMARY: On April 11, 2011, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) proposing new and amended standards for fluorescent lamp ballasts (ballasts) pursuant to the Energy Policy and Conservation Act of 1975 (EPCA). During the subsequent public meeting and in written comments, stakeholders provided additional data and raised concerns regarding the test data DOE used in support of the NOPR and DOE's approach to accounting for measurement variation and compliance certification requirements. In response to several of those comments, DOE conducted additional testing and is publishing this notice to: announce the availability of additional data provided by the National Electrical Manufacturers Association (NEMA) and additional DOE test data; address the differences between the DOE test data and the data submitted by NEMA; describe the methodological changes DOE is considering based on the additional data and present efficiency levels developed using the revised methodology and all available test data; and request public comment on the updated analyses, as

well as the submission of data and other relevant information.

DATES: DOE will accept comments, data, and information regarding this notice of data availability submitted no later than September 14, 2011. See section VI, "Public Participation," of this notice for details.

ADDRESSES: Any comments submitted must identify the notice of data availability (NODA) for fluorescent lamp ballasts and provide the docket number EERE–2007–BT–STD–0016 and/or Regulatory Information Number (RIN) 1904–AB50. Comments may be submitted using any of the following methods:

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

2. *E-mail: ballasts.rulemaking@ee.doe.gov.* Include the Docket Number EERE–2007–BT–STD–0016 and/or RIN number 1904–AB50 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VI of this document (Public Participation).

Docket: The docket is available for review at *http://www.regulations.gov*, including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov.* The *http://www.regulations.gov* Web page contains a link to the docket for this notice, along with simple instructions on how to access all documents, including public comments, in the docket. See section VI.A for further information on how to submit comments through *http://www.regulations.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Tina Kaarsberg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

The EPCA establishes energy conservation standards for certain ballasts and requires that DOE conduct two cycles of rulemaking to determine whether to amend the standards for ballasts, including whether to adopt standards for additional ballasts. (42 U.S.C. 6295(g)(5)–(8)) To complete the first of these rulemakings, DOE published the 2000 Ballast Rule. 65 FR 56740 (Sept. 19, 2000). To complete the second rulemaking, DOE is considering amendments to the existing standards for ballasts and evaluating standards for additional ballasts.

In April 2011, DOE published a notice of proposed rulemaking (NOPR) that proposed new and amended energy conservation standards for fluorescent lamp ballasts (hereafter the April 2011 NOPR). 76 FR 20090. In conjunction with the NOPR, DOE also published on its Web site the complete technical support document (TSD) for the proposed rule, which described the analyses DOE conducted and included technical documentation for each analysis. The TSD also included the engineering analysis spreadsheets, the life cycle cost (LCC) spreadsheet, the national impact analysis spreadsheet, and the manufacturer impact analysis (MIA) spreadsheet.[1]

DOE held a public meeting on May 10, 2011, to hear oral comments on and solicit information relevant to the proposed rule (hereafter the May 2011 public meeting). At this meeting, NEMA presented test data that they found inconsistent with the data collected by DOE and that could affect the standards established in the final rule. In general, NEMA's ballast luminous efficiency (BLE) values appeared to be lower than those obtained by DOE. These observations caused NEMA to question the validity of the data collected by DOE for the April 2011 NOPR. NEMA specifically cited lab accreditation, sample size, and calculations of BLE as potential sources of the discrepancies they observed. Other stakeholders agreed that there were discrepancies between the two data sets and emphasized the importance of identifying the source of the differences. In addition, DOE received comments on the methodology used to account for compliance certification requirements, design variation, and measurement variation. DOE also received comments on the appropriate shape of DOE's proposed efficiency level curves.[2]

Since the publication of the NOPR, DOE has analyzed NEMA's data and conducted additional testing to enhance

[1] The spreadsheets developed for this rulemaking proceeding are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/fluorescent_lamp_ballasts.html.*

[2] Comments referenced here are available in the docket for this rulemaking, which can be found at regulations.gov under docket number EERE–2007–BT–STD–0016.

its analysis. In order to incorporate these additional results, DOE has modified slightly its approach to the engineering analysis and thus is considering efficiency levels that differ from those presented in the April 2011 NOPR.

DOE is publishing today's NODA to: (1) Announce the availability of the additional NEMA test data and the additional test data developed by DOE; (2) address the differences between test data obtained by DOE and test data submitted by NEMA; (3) describe the methodological changes DOE is considering based on the additional data and present efficiency levels developed using the revised methodology and all available test data; and (4) request public comment on these analyses, as well as the submission of other relevant information. The following sections describe the addifional data and revised methodology in more detail. After considering the comments received, DOE will publish a final rule by October 28, 2011.[3]

II. Additional Data

For the April 2011 NOPR, DOE tested more than 450 ballasts to develop proposed energy conservation standards. At the time the NOPR was published, DOE posted test data to its public Web site in Appendix 5C of the TSD. Appendix 5C contained a listing of all ballast models tested at DOE's primary lab for the April 2011 NOPR, including identifying characteristics such as lamp type operated, number of lamps operated, starting method, ballast factor, input voltage, and catalog performance value. For each ballast model, DOE also reported average[4] tested values for input power, total lamp arc power, and BLE.[5]

At the May 2011 public meeting, NEMA presented data collected from several manufacturers. These test results were contained in a power point presentation that was subsequently posted to the public meeting Web site (*http://www1.eere.energy.gov/buildings/appliance_standards/residential/fluorescent_ballasts_nopr_public_meeting.html*). NEMA's data included average BLE values from three manufacturers that were reduced by 0.8 percent to account for compliance certification requirements. Attendees of the public meeting noted that the BLE values of the most efficient ballast models tested by NEMA appeared to be less than the most efficient ballast models tested by DOE. These stakeholders emphasized the importance of identifying the reasons for the differences between the two data sets. In addition, several stakeholders requested that DOE provide more information, including data for individual ballast samples and test results from other labs at which testing was conducted. NEMA also noted that about 60 percent of DOE's test data represented ballast models with less than four tested samples, which is not consistent with the minimum number of samples required to demonstrate compliance with DOE's standards. The California Utilities (CA Utilities) stated that if possible, DOE should conduct testing of four or more samples to more accurately reflect the testing process that must be completed by manufacturers for certification purposes.

Following the May 2011 public meeting, DOE posted to the public meeting Web site a more comprehensive set of test data used to develop the April 2011 NOPR, which specified ballasts by serial numbers, added round robin test results, and included results for each sample tested, rather than the average across several samples for each model number. DOE also purchased and tested additional ballasts to increase tested models' sample size to a minimum of four samples consistent with compliance certification requirements in 10 CFR 429.26. DOE also tested additional ballast models, particularly for sign ballasts and residential ballasts, to gain more market information about these ballasts. This NODA announces the availability of all available test data—the NEMA-provided data, the data utilized for the April 2011 NOPR, and the results of additional testing conducted after publication of the April 2011 NOPR—on DOE's Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/fluorescent_lamp_ballasts.html*.

III. Comparison of NEMA-Provided Data and DOE Data

At the May 2011 public meeting, NEMA presented test results for its highest efficiency NEMA Premium products. NEMA explained that the data contained in the presentation represented the mean of four or five samples that was then decreased by 0.8 percent to account for compliance requirements. NEMA stated that this reduction, consistent with DOE's proposed reduction to efficiency levels in the April 2011 NOPR, was calculated using the same methods that are required to certify with new standards.

In addition to their observation that the manufacturer-provided data was lower in efficiency than DOE's data, NEMA expressed concern regarding DOE's data collection methods. NEMA commented that the number of samples DOE tested for several ballast models was too small, potentially resulting in test data not representative of the mean efficiencies of the ballast model's population. They pointed out that for the majority of ballast models included in the analysis, DOE tested fewer than four samples, which is not consistent with the minimum number of samples required to demonstrate compliance with DOE's standards. NEMA also commented that the difference between the data it collected and DOE's results may be due to DOE's labs not having proper accreditation. Furthermore, NEMA stated that the measured BLEs reported in appendix 5C of the NOPR TSD were not consistent with the BLEs calculated by NEMA (using data from the same appendix).

Following the May 2011 public meeting, several manufacturers provided the model numbers and corresponding efficiencies for the ballasts included in NEMA's data set. Upon receiving this information, DOE conducted a comparative analysis and evaluated potential sources for the apparent discrepancies between the DOE and NEMA data sets: The reduction factor NEMA applied to its average BLE values, sample size, lab accreditation, the calculation of BLE, and the arc powers reported for NEMA's results.

After considering all of the potential sources, discussed in the following sections, DOE preliminarily concludes that, after removing NEMA's reduction factor as discussed in section III.A., the remaining differences between the two data sets arise primarily from normal measurement variation. This remaining variation generally falls within the expected measurement variation of ± 2.5 percent of the mean efficiency, suggested by NEMA. Additional testing has increased sample size such that it is consistent with compliance certification requirements. DOE has also confirmed that its testing was conducted in accordance with the active mode test procedure and that its calculations of BLE are accurate.

[3] Under the consolidated Consent Decree in *New York* v. *Bodman*, No. 05 Civ. 7807 (S.D.N.Y. filed Sept. 7, 2005) and *Natural Resources Defense Council* v. *Bodman*, No. 05 Civ. 7808 (S.D.N.Y. filed Sept. 7, 2005), the U.S. Department of Energy was required to publish a final rule amending energy conservation standards for fluorescent lamp ballasts no later than June 30, 2011. The consent decree was later modified, requiring DOE to publish a final rule no later than October 28, 2011.

[4] The average across several samples for each model number.

[5] DOE obtained these values in accordance with the active mode test procedure in Appendix Q1 of 10 CFR part 430.

A. NEMA Reduction Factor

As stated earlier, the ballast efficiencies presented by NEMA at the May 2011 public meeting represent the mean of four or five samples decreased by 0.8 percent. To calculate this 0.8 reduction factor, NEMA referred DOE to an analysis NEMA conducted and submitted as a comment. In that analysis, NEMA calculated the 0.8 percent reduction factor based on an application of the certification equation described in 10 CFR 429.26. NEMA assumed that each sample set's three standard deviation spread was equal to five percent of the mean efficiency (2.5 percent for design variation and 2.5 percent for measurement variation). NEMA then calculated a mean efficiency adjustment factor (for sample sizes of four and five) by inserting this standard deviation into the certification equation. This adjustment factor represented an estimate of the percent difference between the sample mean and the value NEMA anticipated reporting to DOE for certification.

To understand potential discrepancies between NEMA and DOE's test data, it is necessary to ensure that similar calculation methodologies have been undertaken for the two data sets. Therefore, for the purpose of comparing the efficiency data, DOE removes the 0.8 percent reduction from NEMA's presented ballast efficiencies, resulting in values that represent mean tested efficiencies. These efficiency values are analogous to DOE's mean tested efficiencies presented in the NOPR. However, DOE recognizes the importance of accounting for measurement variation and certification requirements in establishing efficiency levels. Additional discussion of these issues and how DOE is considering addressing them is provided in section IV.

B. Sample Size

NEMA noted that less than 40 percent of DOE's test data for the April 2011 NOPR represented ballast models with four or more tested samples. They stated that the large standard deviation in efficiency among DOE's samples, as well as the discrepancy in tested values versus catalog reported values, indicates that DOE potentially did not use a sufficient number of samples to calculate the mean efficiencies of the ballast models analyzed. The California Utilities (CA Utilities) stated that if possible, DOE should conduct testing of four or more samples per ballast model to more accurately reflect the testing process that must be completed by manufacturers for certification purposes.

Since the publication of the April 2011 NOPR, DOE has conducted additional testing to increase the sample size of selected ballast models. Over 90 percent of tested ballast models now have a minimum of four samples. Only in those cases where models have been discontinued or were unavailable for purchase was DOE unable to test a minimum of four samples.

C. Lab Accreditation

NEMA also commented that the difference between the data it collected and DOE's results may be due to DOE's labs not having proper accreditation. DOE notes that 10 CFR 430.25 requires testing of fluorescent lamp ballasts to be performed in accordance with Appendix Q1 of 10 CFR part 430 subpart B by test laboratories accredited by National Volunteer Laboratory Accreditation Program (NVLAP) or a NVLAP-recognized organization, Underwriter Laboratories, or Council of Canada in accordance with ISO 17025. 76 FR 25211, 25219 (May 4, 2011). ISO 17025 is an international standard that outlines general requirements for the competence of testing and calibration laboratories. NVLAP operates an accreditation system that requires applicant laboratories to be assessed against all ISO 17025 requirements.

DOE has contacted both test laboratories utilized for DOE testing and verified each is properly accredited and that all testing was conducted in accordance with the active mode test procedure in Appendix Q1. However, DOE recognizes that lab-to-lab variation can still be present among NVLAP-accredited test labs following the prescribed test procedure. DOE accounts for lab-to-lab variation in the establishment of efficiency levels as described in section IV.B.

D. Measured Versus Calculated BLE

NEMA identified several samples in DOE's test data for which the measured BLE reported in appendix 5C of the NOPR TSD was not consistent with the BLE calculated by NEMA. Though some of the differences were small, NEMA provided examples of four ballast models with differences up to 8 percent.

To address the small discrepancies, DOE notes that the information provided by NEMA is consistent with calculating the BLE values by dividing the average arc power of all samples by the average input power of all samples. NEMA's method is not consistent with the active mode test procedure. In contrast, DOE's measured BLE reported in appendix 5C of the TSD was determined, as required in the test procedure, by averaging the BLE of each individual sample. Based on DOE's analysis, this difference in methodology accounts for the small discrepancies observed between the values reported in appendix 5C and those calculated by NEMA.

DOE also worked to resolve the larger differences cited by NEMA in their presentation at the May 2011 meeting. DOE identified six samples with measured-versus-calculated BLE differences ranging from 7.8 to 8.0 percentage points, which included the specific examples cited by NEMA. These six samples were all magnetic ballasts; in accordance with active mode test procedure (see Table A, Appendix Q1 of 10 CFR part 430 subpart B), DOE calculated BLE by reducing the measured ballast efficiency (lamp arc power divided by ballast input power) by a frequency adjustment factor (1.00 for high-frequency ballasts and values ranging from 0.93 to 0.95 for low-frequency ballasts). These larger discrepancies are consistent with NEMA not including this adjustment factor in its calculation of BLE. Thus, DOE believes its measured BLE values are correctly calculated and consistent with the active mode test procedure.

E. Total Lamp Arc Power Approximations

Due to the relationship between total lamp arc power and ballast efficiency, in the NOPR, DOE proposed establishing efficiency levels as logarithmic equations dependent on measured total lamp arc power. When NEMA plotted their test data against the DOE proposed efficiency levels, however, NEMA paired their ballast efficiency test data with approximated total lamp arc powers rather than measured arc powers. DOE found these approximations to be higher than typical test results for similar ballast types in DOE's data set, with differences as high as 27.6 percent overall. As this discrepancy could potentially cause NEMA's test data to appear to have artificially lower efficiencies relative to DOE's efficiency levels, DOE has revised NEMA's approximate lamp arc powers using American National Standards Institute (ANSI) rated high frequency lamp arc powers to calculate total expected lamp arc power. These lamp arc powers better align with expected total lamp arc powers for similar ballast types.

For example, NEMA associated the efficiency of a ballast with a normal ballast factor that operates two 4-foot medium bipin (MBP) T8 lamps with an arc power of 55 W. To correct the

approximated arc power, DOE calculated the typical arc power (51 W) by multiplying the ANSI-specified high frequency arc wattage for an F32T8 lamp (29 W) by the number of lamps operated (2) and the most common normal ballast factor (0.88). DOE used this calculated arc power when comparing its efficiency levels to the manufacturer-provided data as discussed in section V.

IV. Accounting for Variation and Compliance Certification Procedures

In the April 2011 NOPR, DOE accounted for measurement variation and certification requirements by calculating reduction factors for each and adjusting the efficiency levels accordingly. DOE calculated a 0.6 percent reduction factor for measurement variation by comparing the data from the primary laboratory, which conducted the majority of DOE's testing, with data from its secondary laboratory, which tested a limited number of identical samples. DOE applied the 0.6 percent measurement variation reduction to the efficiency curves so that the standard level could, on average, be met by ballasts tested at the less efficient lab. To account for certification requirements, DOE calculated the difference between the output of the compliance certification equation in 10 CFR 429.26 and the sample mean of DOE's test data to be 0.2 percent. As DOE's certification requirements at 10 CFR 429.26 require manufacturers to report the lower of these two values, DOE reduced the efficiency levels, based on average BLEs, by this value. Using the data that DOE made available immediately following the May 2011 public meeting, both NEMA and the CA Utilities submitted analyses to determine how DOE's data should be adjusted to account for certification requirements and measurement variation.

NEMA's analysis used an assumed design variation and a calculated measurement variation in the compliance certification equation to adjust each ballast efficiency data point. NEMA then suggested that DOE base its efficiency levels on these adjusted data points rather than mean efficiency values. Specifically, NEMA determined the mean BLE for each ballast model by averaging all tested values of that particular model. NEMA then calculated the maximum measurement variation across labs for each category of fluorescent lamp ballast (*e.g.*, 4-foot MBP, 4-foot miniature bipin (MiniBP), or 8-foot recessed double contact (RDC) high output (HO)). NEMA added this highest calculated measurement variation for each ballast type to a 2.5 percent assumed design tolerance to characterize the total variation. NEMA then entered these variations into the compliance equation to calculate a reduction factor based on sample size of each tested model.

The CA Utilities also conducted an analysis on the data DOE provided following the May 2011 public meeting. They agreed with NEMA that compliance certification requirements should be considered when assessing whether products will meet each standard level. However, they pointed out that NEMA had employed methods to characterize the reported value that were not consistent with the requirements specified in 10 CFR 429.26. Instead, the CA Utilities used individual samples of DOE's efficiency data to calculate both the sample mean and the value determined by the compliance certification equation in 10 CFR 429.26. Then, as directed by the compliance certification regulations, they represented reported efficiency as the lower of the two values. They suggested that DOE base its efficiency levels on these reported values.

Consistent with the April 2011 NOPR, DOE recognizes the importance of considering the variation present in the test data when developing efficiency levels. DOE acknowledges that due to design variation, the reported value for compliance certification may deviate from the sample mean and must be accounted for. As described in the following sections, DOE is considering modifying its approach to account for variation and compliance certification procedures based on the comments provided.

A. Compliance Certification Requirements and Design Variation

DOE agrees with both NEMA and the CA Utilities that standard levels should account for the procedures manufacturers must follow to certify compliance with standards. As stated earlier, 10 CFR 429.26 requires manufacturers to test a minimum of four fluorescent lamp ballasts and report the minimum of either the mean efficiency of the samples or the output of a compliance certification equation based on the lower 99 percent confidence limit of the sample. The lower 99 percent confidence limit equation requires a calculation of the standard deviation of the sample set to account for design variation.

Both the NEMA and CA Utilities approaches recommend that, in order to develop efficiency levels, DOE should adjust its mean efficiency data points to represent values similar to those manufacturers would report to DOE for compliance certification. However, their approaches differ in how they computed the standard deviation to input into the compliance certification equation. The CA Utilities calculated the standard deviation among all samples of a particular ballast model tested at a single lab. NEMA, however, calculated the standard deviation by assuming a 2.5 percent design variation and then adding an additional measurement variation based on DOE's lab-to-lab test data for each ballast category.

DOE disagrees with NEMA's method of applying the compliance certification requirements. Firstly, the test procedure's compliance requirements direct manufacturers to calculate the standard deviation of the tested sample, rather than an assumed population standard deviation. Secondly, this calculation would likely not include data from more than one lab unless manufacturers chose to test their samples of a single ballast model at more than one location. DOE is considering accounting for measurement (specifically lab-to-lab) variation as a separate adjustment to efficiency levels as discussed below in section IV.B.

The CA Utilities evaluated both the sample mean and compliance equation for each ballast model and compared the lower of the two, the reported value, to the standard level. DOE believes the CA Utilities approach for accounting for compliance certification requirements is more consistent with the procedures laid out in 10 CFR 429.26 and is therefore considering using this methodology in the final rule. To facilitate this approach, as discussed earlier, DOE conducted additional testing since publication of the NOPR to increase the sample size of several ballast models in accordance with compliance certification requirements. To account for both certification requirements, DOE has calculated a new data set which represents the reported value for all ballast models. DOE used these reported values to develop the efficiency levels described in section V of today's NODA.

B. Measurement Variation

DOE is also considering revising its methodology to account for measurement variation, specifically lab-to-lab variation. DOE received test data from NEMA following the May 2011 public meeting and also received test data from NEMA-member manufacturers. The data from manufacturers allowed DOE to match NEMA test data with the same ballast models tested at DOE's primary and

secondary labs. Using the model-specific test data supplied by several manufacturers (representative of three different manufacturer labs) and DOE's BLE data (representative of the two labs used by DOE), DOE determined that on average, the BLE test data from DOE's primary lab was 0.7 percent more efficient than the average test lab. DOE attributes this offset to systematic lab-to-lab variation and therefore is considering reducing the efficiency levels by 0.7 percent so that they are representative of ballasts tested at the average test lab. This approach is slightly different than that taken in the April 2011 NOPR, which applied a 0.6 percent reduction to efficiency levels, representing the average offset between DOE's primary lab and the least efficient lab (in that case, DOE's secondary lab). DOE believes that adjusting efficiency levels so that they represent the average test lab better characterizes the mean performance of products currently being sold.

V. Efficiency Levels

A. Equation

In the NOPR, DOE proposed establishing efficiency levels as logarithmic equations dependent on total lamp arc power. DOE developed this logarithmic relationship by empirically fitting curves to manufacturer product lines present in DOE's test data. DOE is considering changing the contour of the efficiency levels for the final rule to better fit all of the available data. Upon analysis, NEMA's test data show a larger efficiency decrease at lower powers than DOE's data indicate. Although DOE and NEMA generally tested the same types of ballasts, NEMA tested more permutations of ballast factor and number of lamps for each product line, particularly at lower wattages. For example, NEMA's data contained BLE values for 1-lamp 4-foot MBP ballasts with both low and high ballast factors, whereas DOE's data included 1-lamp 4-foot MBP ballasts with only normal ballast factors. Therefore, based on an application of several equation forms of efficiency levels, DOE concluded that a power law equation fits both the NEMA data and DOE's data better than the logarithmic relationship proposed in the April 2011 NOPR. A power law equation takes the form:

$$BLE = \frac{A}{1 + B * power^{-C}}$$

Where: Power = total measured lamp arc power

Because the NEMA data represents the most complete product lines and thus may represent a more accurate depiction of a BLE-lamp arc power relationship than DOE's initial test data, DOE fit power law regressions to the NEMA test data to calculate the exponent "C." For the instant start and rapid start (IS/RS) ballasts, DOE found the exponent "C" to be 0.25. The exponent 0.25 is also a quantity used in relating power to relative losses (analog of efficiency) for distribution transformers, and fluorescent lamp ballasts similarly employ transformers and inductors. The programmed start (PS) NEMA data, however, suggested a different exponent for ballasts that use the PS starting method. DOE believes that this alternate shape is attributable to the PS ballasts' higher fixed losses due to internal control circuitry and heating of lamp electrodes (cathode heating). As these losses are a larger proportion of total losses at lower powers, the PS product classes have a steeper slope across the range of wattages. Using NEMA's data for PS ballasts, DOE found the exponent "C" to be 0.37.

With exponents set for the two starting method categories, DOE fit the power law equation to the reported value data (calculated in accordance with 10 CFR 429.26 as discussed in section IV.A) by adjusting the coefficient "B" to delineate among criteria such as different product lines, ballasts that operate different lamp types, and other clusters in efficiency data. The most efficient (maximum technologically feasible) efficiency levels closely approximate the NOPR proposals for the highest wattages, but better follow product line efficiency trends at lower wattages.

B. Preliminary Efficiency Levels

Using the methodology described in the previous section, DOE developed a complete set of efficiency levels for this NODA, which are being considered for the final rule. DOE developed power law curve-fits based on the DOE test data. Then to develop efficiency levels, DOE applied a lab-to-lab adjustment factor (derived from all available test data) to these curve-fits (as discussed in section IV.B). In addition, DOE compared the resulting efficiency levels against the NEMA data to confirm the impacts of the efficiency levels on product availability indicated by the analysis of the DOE data. The following sections describe the efficiency levels considered for each representative product class. An Excel spreadsheet summarizing these levels is available on DOE's Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/fluorescent_lamp_ballasts.html*. The final rule and accompanying TSD will include the complete downstream analyses on these levels and results.

1. IS and RS Ballasts

DOE developed three efficiency levels for the IS/RS product class. EL1 was designed to eliminate 4-foot MBP T12 ballasts while allowing 4-foot MBP T8 ballast and 8-foot slimline ballasts to comply with energy conservation standards. EL2 corresponds to a level which allows the highest-efficiency product lines from each of the four major ballast manufacturers to comply. DOE defines a full product line as spanning a sufficient diversity of products (spanning several ballast factors, numbers of lamps per ballast, and types of lamps operated). EL3 is the maximum technologically feasible (max tech) level which DOE defines for fluorescent lamp ballasts as the highest level, regardless of manufacturer, that is technologically feasible for a sufficient diversity of commercially available products. Use of those criteria results in an EL3 with which nearly two manufacturer product lines comply.

2. PS Ballasts

DOE developed three efficiency levels for the PS product class. The least efficient level (EL1) was designed to eliminate the lowest efficiency 4-foot MBP, 4-foot T5 high output, and 4-foot T5 standard output PS ballasts. This also corresponds to a level at which each of the four major fluorescent lamp ballast manufacturers maintain a diversity of products. EL2 allows full product lines from two major manufacturers. Finally, EL3, the maximum technologically feasible level, was designed to represent the most efficient PS ballasts tested by DOE. EL3 is the highest level that allows one full line of products, regardless of manufacturer.

3. Eight-Foot HO Ballasts

For the 8-foot HO IS/RS product class, DOE developed three efficiency levels. For this product class, DOE tested ballasts that operate two lamps, the most common lamp-and-ballast combination. EL1 was designed to just allow the least efficient T12 electronic ballasts, eliminating magnetic ballasts. EL2 allows the least efficient T8 ballast tested and eliminates the vast majority of T12 electronic ballasts. Finally, EL3 was designed to just allow the most efficient T8 ballast tested by DOE.

4. Sign Ballasts

The sign ballast market comprises primarily magnetic and electronic ballasts that operate T12 HO lamps. DOE tested sign ballasts that operate up to one, two, three, four, or six 8-foot T12 HO lamps. The test data showed that sign ballasts exist at two levels of efficiency. Therefore, DOE analyzed a baseline and one efficiency level above that baseline. EL1 was designed to allow a full line of electronic sign ballasts, including ballasts that operate one through six lamps.

5. Residential Ballasts

In the April 2011 NOPR, DOE had proposed that both residential and commercial ballasts could achieve similar levels of efficiency at the highest levels analyzed. Based on the similarity in efficiency, DOE included both ballast types in the same product class. However, for the final rule, after conducting additional testing which indicate that 4-lamp residential ballasts may not be able to achieve the same levels as commercial ballasts, DOE is considering a separate product class for residential ballasts. The additional data for residential ballasts is also available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/fluorescent_ballasts_nopr_public_meeting.html.* Consequently, DOE has derived and is considering two separate efficiency levels for residential ballasts to incorporate the new data. EL1 was designed to just allow the least efficient T8 ballasts, eliminating T12 residential ballasts. EL2, the maximum technology feasible level, is the highest level that allows a full range of T8 products (including both two- and four-lamp ballasts) to comply.

VI. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this NODA no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via e-mail, hand delivery/courier, or mail. Comments and documents submitted via e-mail, hand delivery, or mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, e-mail address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. E-mail submissions are preferred. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case, it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential business information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via e-mail, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked "confidential" that includes all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via e-mail or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this notice, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) The conclusion that after removing 0.8 percent NEMA's reduction factor and recalculating lamp arc powers, the remaining differences between DOE and NEMA-provided data are likely due to normal measurement variation;

(2) The methodology used to account for compliance certification requirements and measurement variation in developing efficiency levels;

(3) The appropriateness of using a power law equation to develop efficiency levels and the chosen values for the exponent "C"; and

(4) The efficiency levels considered.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of data availability.

Issued in Washington, DC, on August 18, 2011.

Timothy Unruh,

Program Manager, Federal Energy Management Program, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–21636 Filed 8–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0725; Directorate Identifier 2011–NM–065–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767–200, –300, and –300F Series 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 model 767–200, –300, and –300F series airplanes. This proposed AD would require doing certain wiring changes, installing a new relay and necessary wiring in the cabin air conditioning and temperature control system (CACTCS), and performing an operational test of the cooling pack fire suppression system. This AD results from reports of loss of avionics cooling due to an unserviceable relay installed on a panel as part of the CACTCS. We are proposing this AD to prevent loss of electrical equipment bay cooling and the overheating of flight deck instruments, which would result in the eventual loss of primary flight displays, an unusually high pilot workload, and depressurization of the cabin.

DATES: We must receive comments on this proposed AD by October 11, 2011.

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:* 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; e-mail *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: Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, WA 98057–3356; *phone:* 425–917–6592; *fax:* 425–917–6590; *e-mail: ana.m.hueto@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–2011–0725; Directorate Identifier 2011–NM–065–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received reports of loss of avionics cooling due to an unserviceable relay. This relay was one of six relays installed on a panel as part of the CACTCS. The failure of this relay caused a smoke mode solenoid to energize, causing the air conditioning system to go into a Class E fire suppression mode, the right side of the relay pack to turn off, and the left-side relay pack to go into low-flow mode. Over time, this caused insufficient equipment cooling and the slow depressurization of the cabin. This condition, if not corrected, could result in loss of electrical equipment bay cooling and the overheating of flight deck instruments, which would result in the eventual loss of all primary flight displays, an unusually high pilot workload, and depressurization of the cabin.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletins 767–21–0246, dated January 7, 2011 (for Model 767–200 and 767–300 series airplanes); and 767–21–0234, dated August 6, 2009 (for Model 767–300F series airplanes). These service bulletins describe procedures for changing the wire bundle route and wiring, installing a new relay and applicable wiring in the CACTCS, and doing an operational test of the cooling pack fire suppression system.

FAA's Determination and Proposed AD Requirements

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. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 35 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
Change wire bundle, install relay, and operational test.	29 work-hours × $85 per hour = $2,465 per relay installation.	$1,240	$3,705	$129,675

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–2011–0725; Directorate Identifier 2010–NM–065–AD.

Comments Due Date

(a) We must receive comments by October 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 767–200 and -300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 767–21–0246, dated January 7, 2011; and Model 767–300F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 767–21–0234, dated August 6, 2009.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 21: Air conditioning.

Unsafe Condition

(e) This AD results from reports of loss of avionics cooling due to an unserviceable relay installed on a panel as part of the cabin air conditioning and temperature control system (CACTCS). We are issuing this AD to prevent loss of electrical equipment bay cooling and the overheating of flight deck instruments, which would result in the eventual loss of primary flight displays, an unusually high pilot workload, and depressurization of the cabin.

Compliance

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

Installation of New Relay and Wiring Bundle

(g) Within 72 months after the effective date of this AD: Change the wire bundle route and wiring, install a new relay and applicable wiring in the CACTCS, and do an operational test, in accordance with the Accomplishment Instructions of the service information specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model 767–200 and 767–300 series airplanes: Use Boeing Special Attention Service Bulletin 767–21–0246, dated January 7, 2011.

(2) For Model 767–300F series airplanes: Use Boeing Special Attention Service Bulletin 767–21–0234, dated August 6, 2009.

Alternative Methods of Compliance (AMOCs)

(h)(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 e-mailed 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.

Related Information

(i) For more information about this AD, contact Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, WA 98057–3356; phone 425–917–6592; fax 425–917–6590; *e-mail: ana.m.hueto@faa.gov.*

(j) 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; e-mail *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 August 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–21667 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0724; Directorate Identifier 2010–NM–181–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757–200, –200PF, and –200CB Series 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 the products listed above. The existing AD currently requires repetitive inspections of the shim installation between the engine strut vertical flange and bulkhead, and repair if necessary. The existing AD also requires, for certain airplanes, an inspection for cracking of the four critical fastener holes in the horizontal flange, and repair if necessary. Additionally, the existing AD requires that the existing action be performed on airplanes without conclusive records of previous inspections. Since we issued that AD, we have received reports of loose fasteners and cracks at the joint common to the aft torque bulkhead and strut-to-diagonal brace fitting and one report of such damage occurring less than 3,000 flight cycles after the last inspection. This proposed AD would reduce the repetitive inspection interval, and add repetitive detailed inspections for cracking of the bulkhead, and repair if necessary. This proposed AD would also provide an option, for certain airplanes, to extend the repetitive intervals by also doing repetitive ultrasonic inspections for cracking of the bulkhead, and repair if necessary. This proposed AD would also add an option for the high frequency eddy current inspection for cracking of the critical fastener holes, and repair if necessary. We are proposing this AD to detect and correct cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

DATES: We must receive comments on this proposed AD by October 11, 2011.

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:* 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; phone: 206–544–5000, extension 1; *fax:* 206–766–5680; *e-mail: 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: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6440; *fax:* 425–917–6590; *e-mail: Nancy.Marsh@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–2011–0724; Directorate Identifier 2010–NM–181–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 February 22, 2008, we issued AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), for certain Boeing Model 757–200, –200PF, and –200CB series airplanes powered by Rolls-Royce engines. That AD requires repetitive inspections of the shim installation between the engine strut vertical flange and bulkhead, and repair if necessary. That AD also requires, for certain airplanes, an inspection for cracking of the four critical fastener holes in the horizontal flange, and repair if necessary. That AD resulted from reports of cracking in the pylon under bolts that appear to be undamaged during the existing AD inspections. That AD also resulted from our determination that operators did not maintain records of previous inspections that are necessary to determine the appropriate corrective actions. We issued that AD to detect and correct cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2008–05–10, we have received reports of loose fasteners and cracks at the joint common to the aft torque bulkhead and strut-to-diagonal brace fitting and one report of

such damage found fewer than 3,000 flight cycles after the last inspection.

Related Service Information

We reviewed Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010. This service information reduces the repetitive inspection interval to between 1,800 flight cycles and 3,000 flight cycles, depending on the airplane group and configuration. This service information also adds an optional ultrasonic inspection for the high frequency eddy current inspection to detect cracking of the critical fastener holes, and repairs if necessary. This service information adds procedures for repetitive detailed inspections for cracking of the bulkhead around the access door cutout and around the critical fasteners in the horizontal flange, and repair if necessary. This service information also provides an option, for certain airplanes, to extend the repetitive intervals by also doing repetitive ultrasonic inspections for cracking of the bulkhead around the fasteners in the horizontal flange, and repairs if necessary.

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 all the requirements of AD 2008–05–10.

This proposed AD would reduce the repetitive inspection interval, and add repetitive detailed inspections for cracking of the bulkhead, and repair if necessary. This proposed AD would also provide an option, for certain airplanes, to extend the repetitive intervals by also doing repetitive ultrasonic inspections for cracking of the bulkhead, and repair if necessary. This proposed AD would also add an option for the high frequency eddy current inspection for cracking of the critical fastener holes, and repair if necessary.

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Change to Existing AD

We have removed the "Service Bulletin Reference" paragraph from this proposed AD. That paragraph was identified as paragraph (f) in AD 2008–05–10. Instead, we have provided the full service bulletin citations throughout this proposed AD and re-identified subsequent paragraphs accordingly.

Costs of Compliance

We estimate that this proposed AD affects 309 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
Part I Inspection on fasteners and shims—vertical flange [retained actions from existing AD].	28 work-hours × $85 per hour = $2,380 per inspection cycle.	$0	$2,380 per inspection cycle ...	$735,420 per inspection cycle.
Part II Inspection on fasteners—horizontal flange [retained actions from existing AD].	6 work-hours × $85 per hour = $510 per inspection cycle.	0	$510 per inspection cycle	$157,590 per inspection cycle.
Part IV inspection on critical fasteners—horizontal flange [retained actions from existing AD].	6 work-hours × $85 per hour = $510 per inspection cycle.	0	$510 per inspection cycle	$157,590 per inspection cycle.
Part II Additional inspection actions on fasteners—horizontal flange [new proposed action].	10 work-hours × $85 per hour = $850 per inspection cycle.	0	$850 per inspection cycle	$262,650 per inspection cycle.
Part IV inspection on critical fasteners—horizontal flange [new proposed action].	8 to 22 work-hours × $85 per hour = $680 to $1,870 per inspection cycle.	0	$680 to $1,870 per inspection cycle.	$210,120 to $577,830 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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) 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), and adding the following new AD:

The Boeing Company: Docket No. FAA–2011–0724; Directorate Identifier 2010–NM–181–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 11, 2011.

Affected ADs

(b) This AD supersedes AD 2008–05–10, Amendment 39–15404.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –200CB series airplanes; certificated in any category; line numbers 1 through 1048 inclusive; powered by Rolls-Royce engines.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

Unsafe Condition

(e) This AD was prompted by reports of loose fasteners and cracks at the joint common to the aft torque bulkhead and strut-to-diagonal brace fitting and one report of such damage occurring less than 3,000 flight cycles after the last inspection. We are issuing this AD to detect and correct cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

Compliance

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

Restatement of the Requirements of AD 2007–16–13 With Reduced Repetitive Intervals and New Optional Inspection Method

One-Time Inspection and Repair With Optional Inspection Method

(g) For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD: Within 90 days after August 24, 2007 (the effective date of AD 2007–16–13), do a high frequency eddy current (HFEC) inspection for cracking of the four critical fastener holes in the horizontal flange and, before further flight, do all applicable repairs, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007; or Revision 4, dated June 24, 2010; except as required by paragraph (k) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010, may be used. Doing an ultrasonic inspection for cracking of the fasteners, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010, is an acceptable method for compliance with the HFEC inspection requirement of this paragraph.

(1) Airplanes on which findings on the horizontal or vertical fasteners or the shims led to a rejection of any fastener during the actions specified in Boeing Alert Service Bulletin 757–54A0047, dated November 13, 2003; or Boeing Service Bulletin 757–54A0047, Revision 1, dated March 24, 2005.

(2) Airplanes that had equivalent findings prior to Boeing Alert Service Bulletin 757–54A0047, dated November 13, 2003, except for findings on airplanes identified as Group 1, Configuration 2, in Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, that were prior to the incorporation of Boeing Service Bulletin 757–54–0035.

Repetitive Inspection and Repair

(h) At the applicable initial times specified in paragraph 1.E., "Compliance" of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, except as required by paragraphs (i) and (j) of this AD: Do the inspections specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, and before further flight, do all the applicable related investigative actions and repairs, by doing all the actions specified in Parts I and II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007; or by doing all the actions in Part I and in Step 2 of Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010; except as required by paragraph (k) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010, may be used. Repeat the inspections required by this paragraph at the times specified in paragraph (h)(4) of this AD.

(1) Do detailed inspections of the shim installations between the vertical flange and bulkhead to determine if there are signs of movement.

(2) Do detailed inspections of the four fasteners in the vertical flange to determine if there are signs of movement or if there are gaps under the head or collar.

(3) Do detailed inspections of the fasteners that hold the strut to the horizontal flange of the strut-to-diagonal brace fitting to determine if there are signs of movement or if there are gaps under the head or collar.

(4) Repeat the inspections required by paragraph (h) of this AD at the earlier of the times specified in paragraphs (h)(4)(i) and (h)(4)(ii) of this AD. Thereafter, repeat the inspections at intervals not to exceed the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010.

(i) At intervals not to exceed the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007.

(ii) At intervals not to exceed the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010; or within 90 days after the effective date of this AD, whichever occurs later.

Exceptions to Alert Service Bulletin Procedures

(i) Where Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, specifies a compliance time relative to "the date on this service bulletin," this AD requires compliance within the corresponding specified time relative to the effective date of AD 2007–16–13.

(j) Where Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, specifies a compliance time relative to the "date of issuance of airworthiness certificate," this AD requires compliance within the corresponding time relative to the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(k) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007; or Revision 4, dated June 24, 2010; specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

Restatement of the Requirements of AD 2008–05–10

Inspection/Repair for Airplanes for Which There Are No Conclusive Inspection Records

(l) For airplanes for which there are no conclusive records showing no loose or missing fasteners during previous inspections done in accordance with the requirements of AD 2007–16–13, Amendment 39–15152 (72 FR 44753, August 9, 2007); or AD 2005–12–04, Amendment 39–14120 (70 FR 34313 June 14, 2005): Do the actions specified in paragraphs (l)(1) and (l)(2) of this AD, at the times specified in those paragraphs, as applicable.

(1) Within 90 days after March 18, 2008 (the effective date of AD 2008–05–10), do the actions specified in paragraph (g) of this AD, except as required by paragraph (k) of this AD.

(2) At the applicable initial times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, do the actions specified in paragraph (h) of this AD, except as required by paragraphs (j) and (m) of this AD. And, before further flight, do all applicable related investigative actions and repairs, by doing all the actions specified in Parts I and II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007; or in Part 1 and in Step 2 of Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010; except as required by paragraph (k) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010, may be used. Repeat the actions specified in paragraph (h) of this AD at the times specified in paragraph (h)(4) of this AD.

Exception to Alert Service Bulletin Procedures

(m) Where Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, specifies a compliance time relative to "the date on this service bulletin," this AD requires compliance within the corresponding specified time relative to the effective date of AD 2008–05–10.

Credit for Actions Done in Accordance With Previous Service Information

(n) Except for the actions specified in paragraph (l) of this AD, actions done before March 18, 2008, in accordance with Boeing Service Bulletin 757–54A0047, Revision 1, dated March 24, 2005; or Boeing Alert Service Bulletin 757–54A0047, Revision 2, dated January 31, 2007; are considered acceptable for compliance with the corresponding actions specified in this AD.

(o) An inspection and corrective actions done before June 29, 2005 (the effective date of AD 2005–12–04), in accordance with paragraph (b) or (c), as applicable, of AD 2004–12–07, are acceptable for compliance with the initial inspection requirement of paragraph (h) of this AD.

An Acceptable Method of Compliance With Certain Requirements of AD 2004–12–07

(p) Accomplishing the actions specified in paragraphs (g) and (h) of this AD terminates the requirements specified in paragraphs (b) and (c) of AD 2004–12–07.

New Requirements of This AD

Repetitive Inspections and Repair

(q) At the applicable initial compliance times specified in paragraph (r) of this AD: Do the applicable actions specified in paragraph (q)(1) or (q)(2) of this AD, in accordance with Step 3 of Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010. If no cracking is found, repeat the inspections thereafter at intervals not to exceed the applicable intervals specified in paragraph 1.E., "Compliance," of the Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010. If any crack is found during any inspection required by this paragraph, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(1) For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010: Do the actions specified in paragraph (q)(1)(i) or (q)(1)(ii) of this AD.

(i) Do a detailed inspection for cracking of the bulkhead and in the area around the access door cutout and around the critical fasteners in the horizontal flange.

(ii) Do detailed inspection for cracking of the bulkhead and in the area around the access door cutout and around the critical fasteners in the horizontal flange, and do an ultrasonic inspection for cracking of the bulkhead around the fasteners in the horizontal flange. Doing the actions in this paragraph extends the repetitive intervals of the inspections required by paragraph (q) of this AD.

(2) For Group 1, Configuration 2 airplanes; and Group 2 airplanes; identified in Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010: Do a detailed inspection for cracking of the bulkhead and in the area around the access door cutout and around the critical fasteners in the horizontal flange.

(r) At the applicable times specified in paragraphs (r)(1) and (r)(2) of this AD, do the actions required by paragraph (q) of this AD.

(1) For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010: At the later of the times specified in paragraph (r)(1)(i) or (r)(1)(ii) of this AD.

(i) Within 1,800 flight cycles after accomplishing the most recent inspection required by paragraph (h) of this AD.

(ii) Within 90 days after the effective date of this AD.

(2) For Group 1, Configuration 2 airplanes; and Group 2 airplanes; identified in Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010: At the later of the times specified in paragraph (r)(2)(i) or (r)(2)(ii) of this AD.

(i) Within 3,000 flight cycles after accomplishing the most recent inspection required by paragraph (h) of this AD.

(ii) Within 90 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(s)(1) The Manager, Seattle 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 e-mailed 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.

(4) AMOCs approved previously in accordance with AD 2004–12–07 are approved as AMOCs for the corresponding provisions of this AD.

(5) AMOCs approved previously in accordance with AD 2005–12–04 are approved as AMOCs for the corresponding provisions of this AD.

(6) AMOCs approved previously in accordance with AD 2007–16–13 are approved as AMOCs for the corresponding provisions of this AD.

(7) AMOCs approved previously in accordance with AD 2008–05–10 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(t) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone 425–917–6440; fax 425–917–6590; *e-mail: Nancy.Marsh@faa.gov.*

(u) 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; phone: 206–544–5000, extension 1; fax: 206–766–5680; *e-mail: 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 August 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–21668 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0438; Airspace Docket No. 11–AWA–4]

RIN 2120–AA66

Proposed Amendment to Class B Airspace; Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Salt Lake City, UT, Class B airspace to contain aircraft conducting Instrument Flight Rules (IFR) instrument approach procedures to Salt Lake City International Airport (SCL), Salt Lake City, UT. The FAA is taking this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision, while accommodating the concerns of airspace users. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace to reduce aircraft delays and improve system capacity.

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2011–0438 and Airspace Docket No. 11–AWA–4 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations, and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0438 and Airspace Docket No. 11–AWA–4) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA–2011–0438 and Airspace Docket No. 11–AWA–4." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/regulations_policies/rulemaking/recently_published/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In 1989, the FAA issued a final rule establishing the Salt Lake City, UT, Terminal Control Area (54 FR 43786). As a result of the Airspace Reclassification final rule (56 FR 65638), which became effective in 1993, the terms "terminal control area" and "airport radar service area" were replaced by "Class B airspace area" and "Class C airspace area," respectively. The primary purpose of a Class B airspace area is to reduce the potential for midair collisions in the airspace surrounding airports with high-density air traffic operations by providing an area in which all aircraft are subject to certain operating rules and equipment requirements.

The SLC Class B airspace area was last modified in 1995 (60 FR 48350) using air traffic activity levels from the 1990s, and has not been modified since. In recent years, Salt Lake City has completed construction projects to modernize, enhance safety, and provide for increased capacity at SLC. These projects included the construction of a new Runway 16 R/34 L at SLC. The new west runway places departures closer to the Oquirrh Mountains southwest of SLC, and these departures need to climb to 10,000 feet to safely clear the terrain. This requires downwind traffic to level at 11,000 feet to remain above departures, which leaves the arrival aircraft outside the Class B airspace.

Since the SLC Class B airspace area was established, SLC has experienced increased traffic levels, a considerably different fleet mix, and airport infrastructure improvements enabling simultaneous instrument approach procedures. For calendar year 2009, SLC documented 328,508 total operations and was rated 24th among all Commercial Service Airports with 9,903,821 passenger enplanements. Under the current Class B airspace configuration, aircraft routinely enter, exit, and then reenter Class B airspace while flying published instrument approach procedures, which is contrary to FAA Orders. Modeling of existing traffic flows has shown that the proposed expanded Class B airspace would enhance safety by containing all instrument approach procedures, and associated traffic patterns, within the

confines of Class B airspace and better segregate IFR aircraft arriving/departing SLC and Visual Flight Rules (VFR) aircraft operating in the vicinity of the SLC Class B airspace area. The proposed Class B airspace modifications described in this NPRM are intended to address these issues.

Pre-NPRM Public Input

In 2009, the FAA initiated action to form an Ad Hoc Committee to provide comments and recommendations regarding the planned modifications to the SLC Class B airspace area. Participants in the committee included representatives from National Business Aviation Association (NBAA). Aircraft Owners and Pilots Association (AOPA), Delta and Sky West Airlines, Soaring Society of America (SSA), Utah Hang Gliding and Paragliding Association, Utah General Aviation Association, local flight schools, and individuals impacted by SLC Class B airspace.

The Ad Hoc Committee recommended several charting changes for the SLC VFR Flyway Chart in order to have fewer "blue arrow" routes. This would eliminate clutter and draw more attention to the safety issue associated with paraglider and hang glider activity located east of Interstate 15 (I–15) at Point of the Mountain. The Ad Hoc Committee agreed that one "blue arrow" would suggest a north-south route on the east side of the Salt Lake Valley; and at the south end, the arrow would bend around Point of the Mountain. This would encourage pilots to fly around the hang gliding/paragliding area. The arrow would recommend northbound at 6,500 feet and southbound at 7,500 feet.

Additionally, the Ad Hoc Committee suggested a bold note warning aircraft of the potential for hang gliding/paragliding activity east of I–15 at Point of the Mountain. A second "blue arrow" would suggest a route between the Garfield Stack at the north end of the Oquirrh Mountains and Point of the Mountain. The committee also suggested placing a "blue arrow" south and west of Hill Air Force Base. Since the F–16 aircraft depart southwest from Hill Air Force Base and climb rapidly to 6,500 feet, it would be safer for VFR aircraft to be at or below 6,000 feet when transitioning through this area.

The Ad Hoc Committee requested a high altitude VFR transition route over I–80 be published. The appropriate Air Traffic Control (ATC) frequency would be published with a suggested eastbound altitude of 11,500 feet and westbound altitude of 10,500 feet. Salt Lake TRACON would prefer to have more flexibility with the VFR over flights, and added "expect" to the routing description to indicate flexibility in route or altitude assignment.

As announced in the **Federal Register** (75 FR 73983), informal airspace meetings were held on January 26, 2011, at the Ogden Conference Room, Ogden Hinckley Airport Terminal; on February 1, 2011, at the Conference Room in the Executive Terminal, West Salt Lake City, UT; and on February 3, 2011, at the Utah Valley University Aviation Flight Center, Provo, UT. These meetings provided interested airspace users with an opportunity to present their views and offer suggestions regarding the planned modification of the SLC Class B airspace. All comments received as a result of the informal airspace meetings, along with the recommendations made by the Ad Hoc Committee, were considered in developing this proposal.

Informal Airspace Meeting Comments

Numerous commenters representing the glider community expressed concern with the proposed floor of area L. The glider pilots requested that the floor of proposed area L be raised to 10,500 feet to allow safer glider operations below Class B airspace along the ridgeline of the Wasatch Mountains.

One commenter, not associated with the glider community and regularly transitions through this area, stated that it was unsafe for him to cross the ridgeline of the Wasatch Mountains below the proposed Class B floor of 10,000 feet.

After review of the flight tracks through proposed Area L, the FAA agrees that the floor of Class B airspace can be raised to 10,500 feet in this area and still safely contain instrument procedures.

One commenter requested that the ceiling of Class B airspace remain at 10,000 feet along the eastern edge of Area B over and east of U.S. Highway 89 to allow hang glider operations to remain at 10,000 feet and fly over the strong canyon winds associated with Weber Canyon.

The FAA does not agree. A review of Salt Lake City's flight tracks shows numerous departures below 12,000 feet in this area. A Class B ceiling of 10,000 feet would expose these departures to VFR aircraft transitioning through this area west of the Wasatch Mountains. In addition, keeping one portion of the Class B airspace at 10,000 feet would necessitate adding a new area to the proposed airspace. Designing the Class B airspace with multiple ceiling altitudes increases the complexity of the airspace design, especially when it is only used in one small area. In the interest of reduced complexity, the Class B airspace should keep a consistent ceiling altitude of 12,000 feet.

One commenter requested that the floor of Area E be raised to 7,000 feet. The commenter stated that there is terrain in the area that is difficult to pass over below 6,500 feet, and that there is no logical reason for the air carriers to pass over this area below 7,500 feet.

The FAA does not agree. After conducting a thorough review of Area E, the FAA determined that raising the floor of Class B airspace to 7,000 feet does not safely contain Salt Lake City departure and arrival traffic.

One commenter requested the identification of some visual reporting points to help identify Class B airspace northwest of South Valley Regional Airport (U42).

The FAA was able to locate landmarks to identify the boundary between the proposed Class B surface area (Area A) and Area E, including the Usana Amphitheatre, the intersection of State Route 201 and S. 8000 West St., and Interstate 15 (I–15). The western boundary is located over the foothills of the Oquirrh Mountains and there are no good ground references in this area. The FAA used the Wasatch VOR (TCH) 12-mile DME arc to define the Area E boundary northwest of U42, arcing northwest until intercepting the Union Pacific railroad, then following the railroad westbound. Other than the western boundary of Area E due west of U42, Class B airspace should be easy to identify using landmarks and DME.

Two commenters were concerned with the airspace around Point of the Mountain. One commenter requested that the Class B airspace over restricted area R–6412 be raised to 8,100 feet to avoid congestion east of R–6412 and Point of the Mountain. The other commenter stated that VFR aircraft are already funneled into a narrow space and that the new proposal will only make the situation worse.

The FAA does not agree. The airspace around Point of the Mountain is a congested area. The finals for runways 34R and 35 at SLC pass approximately one mile west of Point of the Mountain. Aircraft on final for runway 34L are at, or descending to, 8,000 feet in this area, and why the 8,000-foot floor is proposed for Area G. With the current Class B design, the floor of Class B airspace is 9,000 feet to the south/southwest of Point of the Mountain and 7,000 feet to the west/northwest. The proposal does lower the Class B airspace west/southwest of the Point of the Mountain area from 9,000 feet to 8,000 feet, but raises the floor of Class B airspace south

of Point of the Mountain from 9,000 feet to 10,000 feet, and the airspace to the west/northwest from 7,000 feet to 8.000 feet. The proposed design allows north- and south-bound VFR aircraft along I–15 and Point of the Mountain to remain 1,000 feet higher, at all times, than the present Class B design allows.

AOPA and three individuals objected to the east to west transitioning through the proposed Class B airspace and one individual requested the FAA establish a VFR corridor. AOPA also requested published recommended altitudes, frequencies, and route of flight on the Salt Lake City VFR Flyway chart.

The FAA does not agree. Salt Lake City's traffic flows and altitudes make an established VFR corridor impractical. Salt Lake City has only one downwind leg that passes west of the airport, and approximately 50 percent of Salt Lake City's traffic also departs to the west. These departures would conflict with any VFR corridor design that passed over the airport. As recommended by AOPA and the Ad Hoc Committee, Salt Lake City will publish frequencies, altitudes, and routes on the VFR Flyway chart to mitigate impacts to VFR aircraft. VFR aircraft, in contact with air traffic controllers, will continue to be able to transition through Class B airspace after receiving a clearance.

One commenter stated that with parachute jump operations at the Ogden airport (OGD), there would be delays in receiving approval for a jump through Class B airspace and delays for the jump aircraft climbing or descending through the proposed Area N.

The FAA does not agree. The parachute operation currently requests permission to jump in this area and the request is approved or denied based on traffic below the jump aircraft. If Area N is added to the Class B airspace as proposed, there would be no change to the current procedures. The jump aircraft can receive a Class B clearance at the same time the jumpers receive permission for the jump, and there will be no increased delay for the jump aircraft.

One commenter questioned why it is necessary to have the floor of Class B airspace at 9,000 feet in Area H, especially in the southern portion.

When Salt Lake City is in a north flow, IFR arrival traffic is regularly at 9,000 feet in this area when aircraft are on downwind, base, and final during their approaches. The VFR transition routes referenced are departure and arrival routes for VFR aircraft operating to and from Salt Lake City International Airport. These routes are contained within the Class B surface area. They cross the arrival end of the runways, then pass under the downwind westbound. A modification of Class B airspace in these areas is not possible. These VFR routes exist to benefit VFR aircraft and are designed to provide a shorter route to the west. If a pilot does not want to use these routes, he or she can always choose to avoid crossing over the water and depart north or south along I–15 enroute to the west practice area.

One commenter stated that local law enforcement has a tracking program that currently operates over the top of Class B airspace at 10,500 feet and that it would make it difficult or impossible to continue the tracking program above 12,000 feet. The individual also contends that the sensitivity of the equipment does not allow two-way radio communication.

The FAA does not agree. Salt Lake City Tower and Approach control has numerous Letters of Agreement with local law enforcement and welcomes discussions about creating a new Letter of Agreement to support the telemetry-tracking program. The area in which these operations occur has numerous aircraft climbing and descending through 10,500 feet, which reinforces the need for the raised ceiling of class B airspace.

One commenter argued that the Mode C veil has greatly reduced general aviation at Cedar Valley Airport (UT10).

The FAA does not agree. UT10 is located approximately 26 miles south of Salt Lake City International and is within the 30 mile Mode C veil. The current Class B design has a floor of 9,000 feet, as does the proposed design. The UT10 elevation is approximately 5,000 feet and should be easily accessible below the 9,000 foot Class B shelf, without requiring a Class B clearance. The proposed Class B airspace design, and the current Mode C veil, do not limit any aircraft operations at UT10 below 9,000 feet.

Two commenters proposed splitting the proposed Area O into two sectors, north and south, with a 6,500 feet area to the north and a 7,000 feet area to the south. The individuals are concerned about commercial aircraft in a continuous flow over their houses.

The FAA does not agree. FAA Order 7400.2 provides that Class B airspace is to be designed to contain all instrument procedures. At the southern edge of proposed Area O, there are two fixes on the runway 34L and 34R ILS approaches, DUNLP and SCOER. After arrivals cross these two fixes, they descend to 6,100 feet to meet the next crossing restriction on the arrival. The instrument approaches IFR aircraft are flying will not change and raising the floor of Class B airspace above 6,000 feet in this area will not contain these two instrument procedures as required.

AOPA contends that raising the ceiling of Class B airspace to 12,000 feet provides no clear operational safety benefits for any specific user, but will have a detrimental impact on general aviation safety and efficiency.

The FAA does not agree. There are approximately 1,000 IFR operations a day that operate at and below 12,000 feet within 30 miles of SLC. The Ad Hoc Committee extensively discussed raising the ceiling to 12,000 feet and a consensus of that group supported the change. The general aviation members of the committee endorsed raising the ceiling to 12,000 feet, and they are the group most familiar with VFR flight in the area.

It should be noted that FAA Order 7400.2 provides that, "The outer limits of the airspace shall not exceed a 30-nautical mile (NM) radius from the primary airport. This 30-NM radius generally will be divided into three concentric circles. The floor of the area between 20 NM and 30 NM shall be at an altitude consistent with approach control arrival and departure procedures. It is expected that this floor would normally be between 5,000 and 6,000 feet above airport elevation." Using this criterion, the floor of the Salt Lake City Class B airspace between 20 and 30 miles should be between 9,227 feet and 10,227 feet. Presently the ceiling of the Salt Lake City Class B airspace is 10,000 feet, and does not contain existing arrival and departure procedures as required. Of the 30 airports with Class B airspace in the United States, SLC has the second highest field elevation. The current height of Salt Lake City Class B airspace rises 5,773 feet above ground level, the lowest of any in the nation. With the requirement to climb departures to 10,000 feet, this leaves ATC with no available altitudes to contain downwind arrivals in Class B airspace. An increase to 12,000 feet would increase the Class B airspace to 7,773 feet above ground level, which is still lower than the national average of 8,373 feet.

Commenters from the Soaring Society of America (SSA) stated that the vertical extension would require more IFR traffic to exit the side of controlled airspace and that the FAA should mandate that all IFR aircraft enter and exit through the top of Class B airspace, referencing FAA Order 7210.3, section 11–1–5. This section states that arrivals and departures should enter and exit the top of Class B airspace, not shall enter and exit through the top of Class B airspace. A further examination of FAA

Order 7210.3 defines the terms "should" and "shall". Shall indicates a procedure is mandatory, should indicates a procedure is recommended.

FAA Order 7210.3, section 11–1–5 also states that, "* * * each Class B airspace shall reflect the most efficient and reasonable configuration to contain large turbine powered aircraft while achieving a higher level of safety." A further examination of the arrival traffic on January 1, 2011, showed that of the 119 arrivals that were at or below 12,000 feet, 74 were large turbine-powered aircraft, or 21 percent.

Commenters from the SSA also stated that even a modest increase in the ceiling height of the SLC Class B airspace will result in a reduction in the number of sailplane flights that are able to transition above the Class B airspace.

The FAA analyzed actual Salt Lake City arrival and departure tracks for July 16, 2010, as it was the hottest day of 2010 at 102 degrees. The FAA selected that date since aircraft climb slower on hot days and this would represent the worst-case departure scenario. Of the 510 departures on that day, 31 departures exited the side of the proposed Class B airspace, which is 6 percent of all departures. The FAA also analyzed January 1, 2011, which was the coldest winter day in 2010/2011 with an average daily temperature of 37.2 degrees. Of the 354 arrivals on that day, 119 arrivals were at or below 12,000 feet before they were contained in the lateral confines of the proposed SLC Class B airspace, which is 32 percent of all arrivals.

Raising the ceiling of Class B airspace to 12,000 feet means that 83 percent of all IFR operations, including large turbine powered and smaller aircraft will depart and arrive through the ceiling of Class B airspace. Raising the ceiling to 12,000 feet is the most efficient and reasonable configuration for Salt Lake's Class B airspace.

The Proposal

The FAA is proposing an amendment to Title 14 of the Code of Federal Regulations (14 CFR) part 71 to modify the SLC Class B airspace area. This action (depicted on the attached chart) would raise the existing ceiling from 10,000 feet to 12,000 feet in order to provide additional airspace that is needed to contain aircraft conducting instrument approach operations within the confines of Class B airspace. Additionally, the proposed modifications would better segregate IFR aircraft arriving/departing SLC and VFR aircraft operating in the vicinity of the Salt Lake Class B airspace area. The proposed modifications to the SLC Class B airspace area are:

Area A. Area A would be redefined from the surface to 12,000 feet. The northern boundary would be moved south an average of 2 miles. This would allow VFR aircraft to transition westbound sooner than is currently available and will relieve some congestion between the Hill Air Force Base (AFB) Class D airspace and Salt Lake City's Class B surface area airspace. As recommended by the Ad Hoc Committee, the surface area north of the Skypark Airport (BTF) would move to the west to relieve congestion between the Class B surface area airspace and the Wasatch Mountains to the east. Also, the surface area east of South Valley Regional Airport (U42) would be removed and combined with the 6,000-foot shelf over and to the southeast of U42. IFR arrivals and departures at Salt Lake airport are above 6,100 feet in this area and would be contained by a 6,000-foot shelf (see Area D).

Area B. Area B would incorporate portions of existing Areas B and J, with a floor at 7,800 feet and the ceiling raised to 12,000 feet. The western boundary would change from the I–BNT 25-mile DME arc to the TCH 20-mile DME arc. Raising the floor of existing Area B from 7,600 feet to 7,800 feet matches the existing Class B airspace area over Hill AFB, and allows VFR aircraft operating in the area to climb sooner than is currently possible.

Area C. Area C would be a new area in existing Class B airspace, with the ceiling raised to 12,000 feet, to reduce congestion in the airspace between the Hill AFB Class D airspace area and the SLC Class B surface area airspace. This area would incorporate a portion of existing Area A, with the floor raised from the surface to 6,000 feet, to allow VFR aircraft easier access to transit north of SLC below the Class B airspace area.

Area D. Area D would remain similar to the existing Area D; expanded laterally into existing Class B airspace with the ceiling raised to 12,000 feet. This area would incorporate a portion of existing Area A, raising the floor from the surface to 6,000 feet, to allow VFR aircraft easier access to and from U42. The southern boundary would ensure aircraft are fully contained within Class B airspace while flying Instrument Landing System (ILS) approaches to runways 34L and 34R.

The Salt Lake Valley has several areas along the west side where the terrain penetrates the floor of existing Class B airspace, making the airspace in those areas unuseable by IFR traffic. As such, the western boundary of the Class B airspace in those areas could be moved to the east without compromising flight safety. The following descriptions of proposed areas E, F, G and H reflect this boundary shift to the east. Since there are not convenient visual landmarks in this area, the western boundaries of the proposed Class B airspace sub-areas are best defined using longitude 112°07′00″ W.

Area E. Area E would combine two existing Class B airspace sub-areas (Areas C and K) into one with the floor established at 6,500 feet and the ceiling raised to 12,000 feet. The southern boundary would extend south slightly using the TCH 16-mile DME arc. The southwest portion of Class B airspace boundary would be relocated east slightly using the TCH 12-mile DME arc to eliminate terrain penetrating the floor of Class B airspace. The western boundary defined by the TCH 13.5-mile DME arc instead of the I–BNT 13-mile DME arc, to the to contain IFR departures.

Area F. Area F would be a new area in existing Class B airspace (Area E), with the ceiling raised to 12,000 feet and the northern boundary defined by the TCH 16-mile DME arc instead of the I–BNT 11 DME arc. The southern boundary would move south slightly to fully contain the runway 34L and 34R ILS approaches.

Area G. Area G would combine the current Areas F and G into one with the floor established at 8,000 feet and the ceiling raised to 12,000 feet. The southern boundary would be established approximately four miles south of the existing southern boundary of existing Areas F and G to allow IFR traffic during Simultaneous Independent ILS approaches to join final closer to the airport and improve efficiency. The terrain in this area is mostly below 7,000 feet and shouldn't restrict VFR aircraft from climbing south bound below the Class B airspace area.

Area H. Area H would remain similar to the current Area H with the floor at 9,000 feet, but the ceiling raised to 12,000 feet. This area would also expand slightly to the west to use the same longitude for its boundary as is used in Area G description, for simplicity, and would redefine the southern boundary further north by using the TCH VOR 33 DME arc.

Area I. Area I would be a new area east of area H, with a floor of 10,000 feet and a ceiling of 12,000 feet, designed to capture arrivals from the southeast. This would be a commonly used corridor for north arrivals, and would aid air traffic control in sequencing.

Area J. Area J would be a new area over the north end of the Oquirrh Mountains with the floor established at 11,000 feet and the ceiling at 12,000 feet. This area would contain IFR departure traffic climbing southbound, as well as contain arrival traffic being vectored to the downwind.

Area K. Area K would be a new area redefining a portion of the current Area B. This area would raise the floor of Class B airspace to 8,600 feet and raise the ceiling to 12,000 feet to provide more altitudes for VFR aircraft.

Area L. Area L would redefine a portion of the current Area I to allow for north-flow departures from SLC to climb and turn eastbound on course. Area L would be established with a floor raised to 10,500 feet and the ceiling raised to 12,000 feet. Currently, there are two geographically separate airspace areas, 9,000 feet to 10,000 feet, that collectively comprise area I. One area is located northeast of SLC Airport, and the other area is located to the southeast. Both of these existing Class B airspace areas have terrain that penetrates the floor of the areas, with the southeastern area actually having terrain that extends through the ceiling of the area as well. Since the southern portion of existing Area I is only occasionally used for IFR aircraft, and is almost never used for large turbo jet aircraft, this portion of Area I would be deleted completely without impact to flight safety. Additionally, the eastern boundary of this new area would be moved to the west along the ridgeline of the Wasatch Mountains and still contain IFR departures turning eastbound.

Area M. Area M would remain similar to the existing Area M, with the floor lowered to 9,000 feet and the ceiling raised to 12,000 feet. The lateral boundaries would extend slightly with the northern boundary extended north to the TCH 26-mile DME arc and the western boundary extended west one mile to ensure the runway 16L/1R downwind is contained within Class B airspace during Simultaneous Independent ILS approaches.

Area N. Area N would be a new area, with the floor established at 10,000 feet and the ceiling at 12,000 feet, intended to contain aircraft flying instrument approaches to SLC runway 17. Runway 17 is used extensively, often designated as a main arrival or departure runway, in the various SLC runway use plans. Aircraft are regularly established on a runway 17 final 30 miles from the airport and descending through 12,000 feet in this area.

Area O. Area O would be a new subarea description that would lower a portion of existing Class B airspace in this area from 7,600 feet to 7,500 feet. Lowering the Class B airspace area floor in this area would allow aircraft flying the runway 16R and 16L ILS approaches to descend to 7,500 feet and provide containment for them throughout the instrument approach procedures. Area O would also incorporate airspace north and east of SLC, currently Area L.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

Economic Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this Order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

After consultation with a diverse cross-section of stakeholders that participated in the Ad Hoc Committee to develop the recommendations contained in this proposal, and a review of the recommendations and comments, the FAA expects that this proposed rule would result in minimal cost. The FAA is taking this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the SLC Class B airspace.

This NPRM would enhance safety, reduce the potential for a midair collision in the SLC area and would improve the flow of air traffic. As such, we estimate a minimal impact with substantial positive net benefits. The FAA requests comments with supporting justification about the FAA determination of minimal impact. FAA has, therefore, determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes the proposal would not have a significant economic impact on a substantial number of small entities as the economic impact is expected to be minimal. We request comments from the potentially affected small businesses. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would enhance safety and is not considered an unnecessary obstacle to trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $140.8 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

ANM UT B Salt Lake City, UT [Modified]

Salt Lake City International Airport (Primary Airport)
(Lat. 40°47′18″ N., long. 111°58′40″ W.)
Salt Lake City VORTAC, (TCH)
(Lat. 40°51′01″ N., long. 111°58′55″ W.)
Hill AFB (HIF)
(Lat. 41°07′26″ N., long. 111°58′23″ W.)

Boundaries

Area A. That area extending upward from the surface to and including 12,000 MSL, within an area bounded by a line beginning at the TCH 20°(T)/004°(M) radial 6.6-mile DME at lat. 40°57′14″ N., long. 111°55′54″ W.; thence south to the intersection of Redwood Rd. and W. 500 South St. at the TCH VORTAC 049°(T)/033°(M) radial 3.1-mile DME at lat. 40°53′02″ N., long. 111°55′48″ W.; thence south to intercept Center St. at the TCH 102°(T)/086°(M) radial 2.3-mile DME at lat. 40°50′32″ N., long. 111°55′57″ W.; thence east along Center St. to intercept the 4.3-mile DME radius of the Salt Lake City International Airport and Interstate 15 (I–15) at the TCH 099°(T)/083°(M) radial 3-mile DME at lat. 40°50′32″ N., long. 111°54′56″ W.; thence clockwise along the 4.3-mile DME radius of the Salt Lake City International Airport to intercept I–15 at the TCH 151°(T)/135°(M) radial 7.3-mile DME at lat. 40°44′37″ N., long. 111°54′15″ W.; thence south on I–15 to intercept W. 5300 South St. at the TCH 163°(T)/148°(M) radial 12.3-mile DME at lat. 40°39′17″ N., long. 111°54′06″ W.; thence west to Usana Amphitheatre at the TCH 192°(T)/176°(M) radial 11.8-mile DME at lat 40°39′26″ N., long. 112°02′14″ W.; thence northwest to the intersection of State Route 201 (SR–201) and S. 8000 West St. at the TCH 210°(T)/194°(M) radial 9.1-mile DME at lat. 40°43′06″ N., long. 112°04′56″ W.; thence northwest to intercept Interstate 80 (I–80) at the TCH 239°(T)/223°(M) radial 9-mile DME at lat. 40°46′22″ N., long. 112°09′04″ W.; thence north to a point southeast of Seagull Point on Antelope Island at the TCH 304°(T)/288°(M) radial 9.3-mile DME at lat. 40°56′12″ N., long. 112°09′03″ W.; thence east to the point of beginning.

Area B. That airspace extending upward from 7,800 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 265°(T)/249°(M) radial 12-mile DME at lat. 40°49′57″ N., long 112°14′40″ W.; thence west along the TCH 265°(T)/249°(M) radial to the 20-mile DME arc at lat. 40°49′13″ N., long. 112°25′09″ W.; thence clockwise along the TCH 20-mile DME arc to intercept the 4.3-mile DME radius of Hill AFB at the TCH 009°(T)/354°(M) radial 20-mile DME at lat. 41°10′47″ N., long 111°54′48″ W.; thence clockwise along the 4.3-mile DME radius of Hill AFB to intercept W. 1700 South St. at the TCH 347°(T)/331°(M) radial 14.7-mile DME at lat. 41°05′21″ N., long. 112°03′22″ W.; thence west on W. 1700 South St. to a point at the TCH 329°(T)/313°(M) radial 16.8-mile DME at lat. 41°05′22″ N., long. 112°10′20″ W.; thence south to a point at the TCH 316°(T)/300°(M) radial 11.6-mile DME at lat. 40°59′22N., long. 112°09′27″ W.; thence south to a point southeast of Seagull Point on Antelope Island at the TCH 304°(T)/288°(M) radial 9.3-mile DME at lat. 40°56′12″ N., long. 112°09′03″ W.; thence southwest to the point of beginning.

Area C. That airspace extending upward from 6,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 316°(T)/300°(M) radial 11.6-mile DME at lat. 40°59′22 N., long. 112°09′27′ W.; thence east to intercept I–15 at the TCH 013°(T)/357°(M) radial 9.8-mile DME at lat. 41°00′32″ N., long. 111°55′59″ W.; thence south to the TCH 020°(T)/004°(M) radial 6.6-mile DME at lat. 40°57′14″ N., long 111°55′54″ W.; thence west to a point southeast of Seagull Point on Antelope Island at the TCH 304°(T)/288°(M) radial 9.3-mile DME at lat. 40°56′12″ N., long. 112°09′03″ W.; thence north to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the Usana Amphitheatre at the TCH 192°(T)/176°(M) radial 11.8-mile DME, lat. 40°39′26″ N., long. 112°02′14″ W.; thence east to the intersection of I–15 and W. 5300 South St. at the TCH 163°(T)/147°(M) radial 12.3-mile DME at lat. 40°39′17″ N., long. 111°54′06″ W.' thence south along I–15 to the TCH 169°(T)/153°(M) radial 20.7-mile DME at lat. 40°30′43″ N., long. 111°53′31″ W.; thence west to the TCH 184°(T)/168°(M) radial 20.4-mile DME at lat. 40°30′38″ N., long. 112°00′33″ W.; thence north to the TCH 184°(T)/168°(M) radial 16-mile DME at lat. 40°35′03″ N., long. 112°00′33″ W.; thence clockwise along the TCH 16-mile DME arc to intercept State Route 48 (SR–48) at the TCH 189°(T)/173°(M) radial at lat. 40°35′13″ N., long. 112°02′18″ W.; thence north to the point of beginning.

Area E. That airspace extending upward from 6,500 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of SR–48 and the TCH 16-mile DME arc at the TCH 189°(T)/173°(M) radial 16-mile DME at lat. 40°35′13″ N., long. 112°02′18″ W., thence clockwise along the TCH 16-mile DME arc to intercept the TCH 203°(T)187°(M) radial at lat. 40°36′14″ N., long. 112°07′00″ W., thence north along long. 112°07′00″ W. to intercept the TCH 12-mile DME arc at the TCH 211°(T)/195°(M) radial 12-mile DME at lat.

40°40'42" N., long. 112°07'00" W., thence clockwise along the TCH 12-mile DME arc to intercept the railroad tracks at the TCH 233°(T)/217°(M) radial 12-mile DME at lat. 40°43'43" N., long. 112°11'27" W.thence west along the railroad tracks to intercept the TCH 13.5-mile DME arc at the TCH 236°(T)/220°(M) radial 13.5-mile DME at lat. 40°43'27" N., long. 112°13'38" W., thence clockwise along the TCH 13.5-mile DME arc to intercept the TCH 265°(T)/249°(M) radial at lat. 40°49'49" N., long. 112°16'38" W.; thence east along the TCH VORTAC 265°(T)/249°(M) radial to the TCH 265°(T)/249°(M) radial 12-mile DME at lat. 40°49'57" N., long. 112°14'40" W.; thence northeast to a point southeast of Seagull Point on Antelope Island at the TCH 304°(T)/288°(M) radial 9.3-mile DME at lat. 40°56'12" N., long. 112°09'03" W.; thence south to I–80 at the TCH 239°(T)/223°(M) radial 9-mile DME at lat. 40°46'22" N., long. 112°09'04" W.; thence southeast to the intersection of SR–201 and S. 8000 West St. at the TCH 210°(T)/194°(M) radial 9.1-mile DME at lat. 40°43'06" N., long. 112°04'56" W.; thence southeast to Usana Amphitheatre at the TCH 192°(T)/176°(M) radial 11.8-mile DME at lat 40°39'26" N., long. 112°02'14" W.; thence south to the point of beginning.

Area F. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 184°(T)/168°(M) radial 16-mile DME at lat. 40°35'03" N., long. 112°00'33" W.; thence clockwise along the TCH 16-mile DME arc to intercept the TCH 203°(T)/187°(M) radial at lat. 40°36'14" N., long. 112°07'00" W.; thence south along long. 112°07'00" W. to a point at the TCH 197°(T)/181°(M) radial 21.4-mile DME at lat. 40°30'55" N., long. 112°07'00" W.; thence east to a point at the TCH 184°(T)/168°(M) radial 20.4-mile DME at lat.40°30'38" N., long. 112°00'33" W.; thence north to the point of beginning.

Area G. That airspace extending upward from 8,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at a point on I–15 at the TCH 169°(T)/153°(M) radial 20.7-mile DME at lat. 40°30'43" N., long. 111°53'31" W.; thence south along I–15 to intercept the TCH 173°(T)/157°(M) radial 24.1-mile DME at lat. 40°27'05" N., long. 111°54'51" W.; thence south along the TCH 173°(T)/157°(M) radial to a point at the TCH 173°(T)/157°(M) radial 27-mile DME at lat. 40°24'12" N., long. 111°54'36" W.; thence west to a point at the TCH 193°(T)/177°(M) radial 27.6-mile DME at lat. 40°24'07" N., long. 112°7'00" W.; thence north to a point at the TCH VORTAC 197°(T)/181°(M) radial 21-mile DME at lat. 40°30'55" N., long. 112°07'00" W.; thence east to the point of beginning. Excluding R–6412, when active.

Area H. That airspace extending upward from 9,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at a point at the TCH 193°(T)/177°(M) radial 27.6-mile DME at lat. 40°27'07" N., long. 112°07'00" W.; thence south along long. 112°07'00" W. to intercept the TCH 33-mile DME arc at the TCH 191°(T)/175°(M) radial 33-mile DME at lat. 40°18'35" N., long. 112°07'00" W., thence counter clockwise along the TCH 33-mile DME arc to a point at the TCH 173°(T)/157°(M) radial 33-mile DME at lat. 40°18'14" N., long. 111°53'40" W.; thence north to a point at the TCH 173°(T)157°(M) radial 27-mile DME at lat. 40°24'12" N., long. 111°54'36" W.; thence west to the point of beginning. Excluding R–6412, when active.

Area I. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning on I–15 at the TCH 173°(T)/157°(M) radial 24.1-mile DME at lat. 40°27'05" N., long. 111°54'51" W.; thence south along I–15 to intercept the TCH 33-mile DME arc at the TCH 160°(T)/144°(M) radial 33-mile DME at lat. 40°19'54" N., long. 111°44'26" W.; thence clockwise along the TCH 33-mile DME arc to the TCH 173°(T)/157°(M) radial at lat. 40°18'14" N., long. 111°53'40" W.; thence north along the TCH 173°(T)/157°(M) radial to the point of beginning.

Area J. That airspace extending upward from 11,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at a point where the TCH 20-mile DME arc intercepts railroad tracks at the TCH 238°(T)/222°(M) radial 20-mile DME at lat. 40°40' 22" N., long. 112°21'12" W.; thence east along the railroad tracks to intercept the TCH 12-mile DME arc at the TCH 233°(T)/217°(M) radial 12-mile DME at lat. 40°43'43" N., long. 112°11'27" W.; thence counter clockwise along the TCH 12-mile DME arc to a point at the TCH 211°(T)/195°(M) radial 12-mile DME at lat. 40°40' 42" N., long. 112°07'00" W.; thence south along long. 112°07'00" W. to intercept a point at the TCH 20-mile DME arc at the TCH 198°(T)/182°(M) radial 20-mile DME at lat. 40°31'59" N., long. 112°07'00" W.; thence clockwise along the TCH 20-mile DME arc to the point of beginning.

Area K. That airspace extending upward from 8,600 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at a point at the TCH 265°(T)/249°(M) radial 13.5-mile DME at lat. 40°49'49" N., long. 112°16'38" W.; thence west along the TCH 265°(T)/249°(M) radial to intercept the TCH 20-mile DME arc at lat. 40°49'13" N., long. 112°25'09" W.; thence counter clockwise along the TCH 20-mile DME arc to intercept the railroad tracks at the TCH 238°(T)/222°(M) radial 20-mile DME at lat. 40°40'22" N., long. 112°21'12" W.; thence east along the railroad tracks to intercept the TCH 13.5-mile DME arc at the TCH 236°(T)/220°(M) radial 13.5-mile DME at lat. 40°43'27" N., long. 112°13'38" W.; thence clockwise along the TCH 13.5-mile DME arc to the point of beginning.

Area L. That airspace extending upward from 10,500 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of the ridge line of the Wasatch Mountains and Interstate 84 (I–84) at the TCH 016°(T)/360°(M) radial 18-mile DME at lat. 41°08'17" N., long. 111°52'18" W.; thence west along I–84 to intercept the 4.3-mile radius of Hill AFB at the TCH 015°(T)/359°(M) radial 17.9-mile DME at lat. 41°08'16" N., long. 111°52'48" W.; thence clockwise along the 4.3-mile radius of Hill AFB to intercept U.S. Highway 89 at the TCH 014°(T)/358°(M) radial 13.6-mile DME at lat. 41°04'11" N., long. 111°54'39" W.; thence south along U.S. Highway 89 to intercept I–15 at the TCH 024°(T)/008°(M) radial 9-mile DME at lat. 40°59'14" N., long. 111°54'05" W.; thence south along I–15 to a point at the TCH 072°(T)/056°(M) radial 4-mile DME at lat. 40°52'16" N., long. 111°53'50" W.; thence east along lat. 40°52'16" N. to a point at the TCH 081°(T)/065°(M) radial 8-mile DME at lat. 40°52'16" N., long. 111°48'30" W.; thence north along long. 111°48'30" W. to intercept the ridge line of the Wasatch Mountains at the TCH 059°(T)/043°(M) radial 9.2-mile DME at lat. 40°55'45" N., long. 111°48'30" W.; thence north along the ridge line of the Wasatch Mountains to the point of beginning.

Area M. That airspace extending upward from 9,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of I–15 and the TCH 26-mile DME arc at the TCH 356°(T)/340°(M) radial 26-mile DME at lat. 41°16'58" N., long. 112°01'33" W.; thence counter clockwise along the TCH 26-mile DME arc to a point at the TCH 338°(T)322°(M) radial 26-mile DME, lat. 41°15'07" N., long. 112°11'50" W.; thence south to intercept the TCH 20-mile DME arc at the TCH 333°(T)/317°(M) radial 20-mile DME at lat. 41°08'50" N., long. 112°10'56" W.; thence clockwise along the TCH 20-mile DME arc to intercept I–15 at the TCH 356°(T)/340°(M) radial 20-mile DME at lat. 41°11'00" N., long. 112°00'49" W.; thence north along I–15 to the point of beginning.

Area N. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of I–15 and the TCH 26-mile DME arc at the TCH 356°(T)/340°(M) radial 26-mile DME at lat 41°16'58" N., long. 112°01'33" W.; thence clockwise to intercept North Mountain Rd. at the TCH 003°(T)/347°(M) radial 26-mile DME at lat. 41°16'59" N., long. 111°56'57" W.; thence south on North Mountain Rd., which turns into Harrison Blvd., to intercept the TCH 20-mile DME arc at the TCH 004°(T)/348°(M) radial 20-mile DME at lat. 41°11'00" N., long. 111°56'56" W.; thence counter clockwise to intercept I–15 at the TCH 356°(T)/340°(M) radial 20-mile DME at lat. 41°11'00" N., long. 112°00'49" W.; thence north along I–15 to the point of beginning.

Area O. That airspace extending upward from 7,500 feet M5L to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of U.S. Highway 89 and a 4.3-mile radius from Hill AFB at the TCH 014°(T)/358°(M) radial 13.6-mile DME at lat. 41°04'11" N., long. 111°54'39" W.; thence clockwise along 4.3-mile radius from Hill AFB to intercept 1700 So. St. at the TCH 347°(T)/331°(M) radial 14.8-mile DME at lat. 41°05'21" N., long. 112°03'22" W.; thence west along W. 1700 South St. to a point at the TCH 329°(T)/313°(M) radial 16.8-mile DME at lat. 41°05'22" N., long. 112°10'20" W.; thence south to a point at the TCH 316°(T)/300°(M) radial 11.6-mile DME at lat. 40°59'22" N., long. 112°09'27" W.; thence east to intercept I–15 at the TCH 013°(T)/357°(M) radial 9.8-mile DME at lat. 41°00'32" N., long. 111°55'59" W.; thence south to a point at the TCH 020°(T)/004°(M) radial 6.6-mile DME at

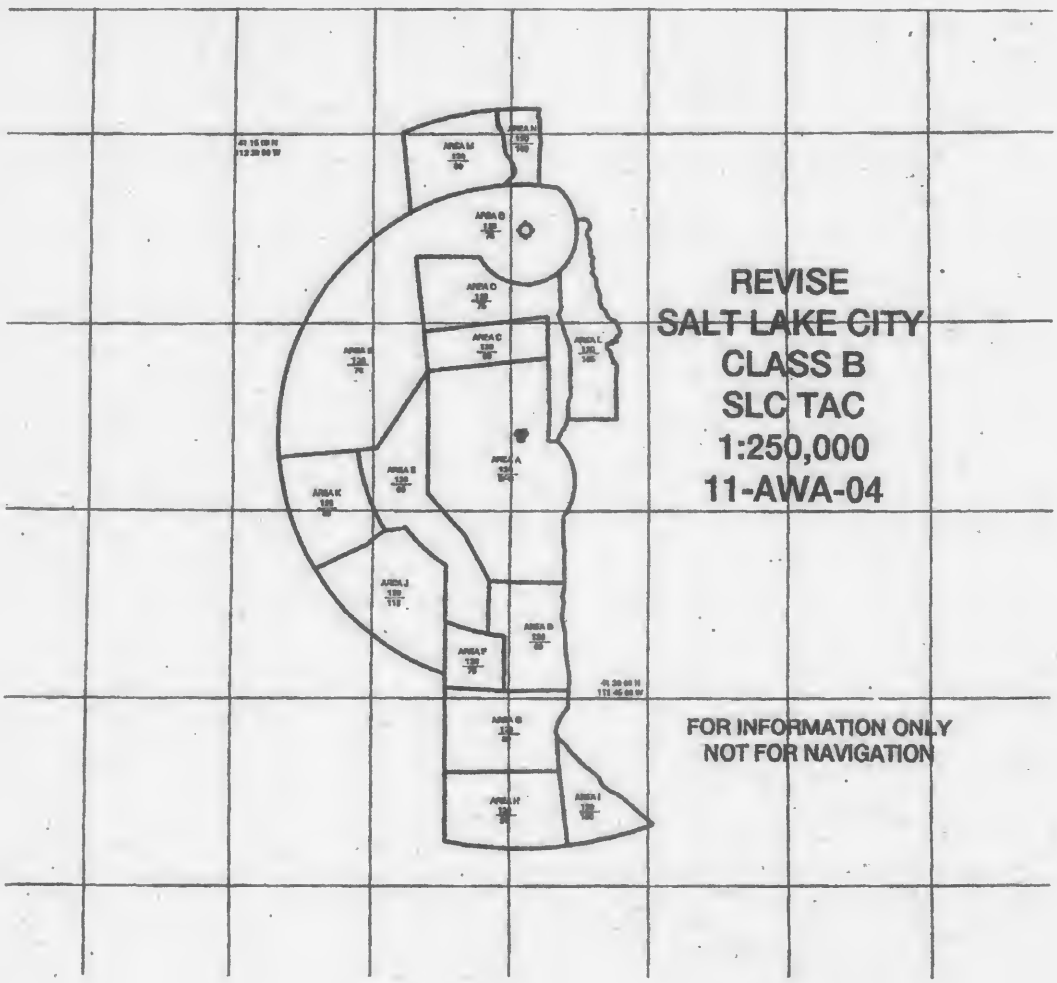
lat. 40°57′14″ N., long. 111°55′54″ W.; thence south to the intersection of Redwood Rd. and W. 500 South St. at the TCH 049°(T)/033°(M) radial 3.1-mile DME at lat. 40°53′02″ N., long. 111°55′48″ W.; thence south to intercept Center St. at the TCH 102°(T)/086°(M) radial 2.3-mile DME at lat. 40°50′32″ N., long. 111°55′57″ W.; thence east along Center St. to intercept the 4.3-mile DME radius of the Salt Lake City International Airport and I–15 at the TCH 099°(T)/083°(M) radial 3-mile DME at lat. 40°50′32″ N., long. 111°54′56″ W.; thence north along I–15 to intercept U.S. Highway 89 at the TCH 024°(T)/008°(M) radial 9-mile DME at lat. 40°59′14″ N., long. 111°54′05″ W.; thence north along U.S. Highway 89 to the point of beginning.

Issued in Washington, DC, on August 15, 2011.

Gary Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

BILLING CODE 4910–13–P



[FR Doc. 2011–21293 Filed 8–23–11; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, 45, and 46

[Docket No. TTB–2010–0004; Notice No. 120; re: Notice No. 106]

RIN 1513–AB78

Standards for Pipe Tobacco and Roll-Your-Own Tobacco; Request for Public Comment

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is reopening the comment period for Notice No. 106, which requested public comments on standards to distinguish between pipe tobacco and roll-your-own tobacco for Federal excise tax purposes based on certain physical characteristics of the two products. This reopening of the comment period solicits comments from the public on certain issues that were raised in public comments received in response to Notice No. 106. This notice also sets forth for possible public comment the results of preliminary laboratory analyses conducted by TTB.

DATES: We must receive written comments on or before October 24, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for Notice No. 106 as posted within Docket No. TTB–2010–0004 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of all published notices, selected supporting materials, and the comments received about this proposal within Docket No. TTB–2010–0004 at *http://www.regulations.gov*. A link to this Regulations.gov docket is posted on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 106. You also may view copies of all published notices, all supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Christopher M. Thiemann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20220; telephone 202–453–1039, Ext. 138.

SUPPLEMENTARY INFORMATION:

TTB Authority

Chapter 52 of the Internal Revenue Code of 1986 (IRC) sets forth the Federal excise tax and related provisions that apply to tobacco products and processed tobacco manufactured, or imported into, the United States. Section 5702(c) of the IRC (26 U.S.C. 5702(c)) defines the term "tobacco products" as "cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco." Each of these terms is also separately defined in section 5702. Section 5702(p) states that a manufacturer of processed tobacco is "any person who processes any tobacco other than tobacco products" and that "the processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco."

Regulations implementing the provisions of chapter 52 of the IRC are contained in 27 CFR parts 40 (Manufacture of tobacco products, cigarette papers and tubes, and processed tobacco), 41 (Importation of tobacco products, cigarette papers and tubes, and processed tobacco), 44 (Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax), 45 (Removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States), and 46 (Miscellaneous regulations relating to tobacco products and cigarette papers and tubes). These statutory and regulatory provisions are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Publication of Notice No. 106

On July 22, 2010, TTB published in the **Federal Register** (75 FR 42659) an advance notice of proposed rulemaking, Notice No. 106, in response to changes made to the IRC tobacco provisions by sections 701 and 702 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). These changes to the IRC included an expansion of the definition of "roll-your-own tobacco" and an increase in the tax rate applicable to pipe tobacco and roll-your-own tobacco that resulted in a significant difference in the tax rates applicable to the two groups of products. In Notice No. 106, TTB described the heightened need for more regulatory detail to clarify the difference between pipe tobacco and roll-your-own tobacco as a result of the tax rate changes adopted by CHIPRA. In that notice, TTB also described and requested comments on six written submissions concerning the distinctions between pipe tobacco and roll-your-own tobacco that it had received in response to earlier rulemaking action regarding CHIPRA.

Comments Received

TTB received 24 comments from groups and individuals in response to Notice No. 106. Commenters provided input on the distinctions between pipe tobacco and roll-your-own tobacco based on physical characteristics as described by the original six submissions noted above. Commenters also provided suggestions on other characteristics which would be useful for distinguishing between pipe tobacco and roll-your-own tobacco, and made other substantive comments about the issues involved in the rulemaking. One of the 24 comments was withdrawn by the commenter after the close of the comment period, and two of the comments were not suitable for public posting because they did not address the issues presented for public comment. The remaining 21 comments may be viewed at the Regulations.gov Web site referred to in the **ADDRESSES** section of this document.

After the close of the Notice No. 106 comment period, TTB received a request to meet with attorneys from Patton Boggs LLP and their client, Liggett Vector Brands LLC. At this meeting, which took place on June 13, 2011, Liggett Vector's chief executive officer and other company representatives presented TTB with a proposal to use certain physical characteristics to distinguish between pipe tobacco and roll-your-own tobacco that differ from the standards proposed by other

commenters, described in Notice No. 106. The new proposal, which was submitted as a slide presentation, is now posted with the comments on Notice No. 106 as Comment 23 and may be viewed at the Regulations.gov Web site referred to above.

Additionally, TTB believes it would be appropriate to bring to the attention of the public the results of preliminary laboratory tests that TTB conducted on a number of products labeled as pipe tobacco and as roll-your-own tobacco purchased by TTB from stores in the Beltsville, Maryland, area on February 13, 2009. TTB subjected the samples to a series of experiments to determine whether there were analytical markers that might be appropriate for further evaluation as a means of distinguishing between pipe tobacco and roll-your-own tobacco, and to evaluate standards submitted by industry members in response to the CHIPRA rulemaking actions in order to identify any methodological issues with those standards. A posting summarizing the results of these laboratory tests may be viewed at the Regulations.gov Web site referred to under the **ADDRESSES** section of this document. These posted results do not constitute a TTB conclusion regarding the distinction between pipe tobacco and roll-your-own tobacco but rather are merely intended as an additional point of reference for comments that the public may wish to make regarding the basic issue raised in Notice No. 106.

Determination To Re-Open Public Comment Period

Because some of the comments received in response to Notice No. 106 raise points that were not specifically addressed in that notice, and in view of the subsequent proposal from Liggett Vector Brands LLC, TTB has determined that it would be appropriate to reopen the comment period for Notice No. 106 in order to afford industry members and other interested parties an opportunity to submit comments on those additional points and proposals. In addition, the Bureau believes that it would be appropriate to make available for comment preliminary results of the laboratory procedures referred to above.

Accordingly, TTB is reopening the comment period for Notice No. 106 for an additional 60 days from the date of publication of this document. After the close of that 60-day comment period, TTB will carefully review the comments previously submitted in response to Notice No. 106, the Liggett Vector Brands LLC proposal, and any additional comments submitted in response to this document, in order to determine whether there is a sufficient basis for the publication of a notice of proposed rulemaking regarding specific regulatory changes to clarify the distinction between pipe tobacco and roll-your-own tobacco.

Public Participation

Comments Invited

As discussed above, in addition to the questions originally presented in Notice No. 106, TTB invites interested members of the public to comment on the proposals made by various commenters and on whether the proposed standards are appropriate and sufficient for distinguishing between pipe tobacco and roll-your-own tobacco. Further, we continue to invite commenters to opine on how many of the physical characteristics in a given proposal should be present in order for the product to be classified as "pipe tobacco" (*e.g.*, 2 of 5, 3 of 6). Finally, because we recognize that roll-your-own tobacco and pipe tobacco must be classified relative to processed tobacco, which is not taxed, we also invite comments on how processed tobacco may differ from the other two named commodities.

If any comments include the results of any analytical procedures by or on behalf of the commenter, please provide the specific analytical data on which the comment is based. All comments previously submitted to TTB regarding Notice No. 106 will be given full consideration, so there is no need to resubmit such comments.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to Notice No. 106 as posting in Docket No. TTB–2010–0004 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov*. A link to the docket is posted on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 106. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 106 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and the Bureau considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of all published notices, selected supporting materials, and all comments received in response to this proposal within Docket No. TTB–2010–0004. A link to this docket is posted on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 106. You may also reach Docket No. TTB–2010–0004 through the Regulations.gov search page at *http://www.regulations.gov*.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You and other members of the public may view copies of all published notices, all supporting materials, and all electronic or mailed comments TTB has received or will receive in response to

this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Drafting Information

Christopher M. Thiemann of the Regulations and Rulings Division drafted this notice.

Signed: August 10, 2011.

Mary G. Ryan,

Acting Administrator.

[FR Doc. 2011–21612 Filed 8–23–11; 8:45 am]

BILLING CODE 4810–31–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2011–12; Order No. 810]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is establishing a docket in response to a Postal Service request for an informal rulemaking on proposed changes in certain analytical methods used in periodic reporting. The proposed changes are identified as Proposals Four through Eight. They affect, respectively, Inbound International Mail; cost assignment of certain flat sorting operations; bias in mixed mail tallies; and Express Mail. Establishing this docket will allow the Commission to consider the Postal Service's proposal and comments from the public.

DATES: *Comments are due:* September 9, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On August 8, 2011, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes in the analytical methods approved for use in periodic reporting.[1]

Proposal Four: Proposed change in method of reporting Revenue, Pieces, and Weight (RPW) for Inbound International Mail. Currently, in its RPW report, the Postal Service estimates the revenue that it receives from the terminal dues system for six major Inbound International Mail products by developing a distribution key for those products from the most recently completed International Cost and Revenue Analysis (ICRA) report. It applies that key to international mail revenues in the relevant General Ledger accounts. Where it relies on this method to estimate product revenues in the RPW, it does not estimate pieces or weight for those products.

Since Quarter 2 of FY 2010, the Postal Service has been using the Foreign Postal Settlement (FPS) system to settle its international mail accounts. With respect to inbound settlement, FPS compiles revenue, piece, and weight information by product stream from billing documents/electronic messaging. FPS posts revenue to the book of accounts based on actual inbound transactions processed, and on estimates of transactions received, but not yet processed. While the settlement process is not completed until months after the close of the calendar year, the FPS system accrues revenue monthly, based on the estimate of mail volume received that month. When final settlement occurs the following year, the difference between the accrued amount and the final settlement amount is posted to the appropriate General Ledger account. *Id.* at 6.

The Postal Service has developed software that maps FPS inbound product streams to the categories used in the Inbound International RPW. Proposal Four would replace the ICRA distribution key method of estimating the revenue of inbound products with the more detailed and timely data mapped from FPS. The Postal Service explains that an incidental benefit of the proposed mapping is that it would align RPW reporting categories more closely with the Mail Classification Schedule than is the case currently.[2]

The Postal Service also proposes to report prior-year settlement revenues and currency gains and losses in Other Mailing Services Revenue (Market Dominant) and Other Shipping Services Revenue (Competitive). The Postal Service asserts that these entries have no direct correlation with current-period activity, and therefore would distort RPW relationships if they were to continue to be included in the current-period report. *Id.*

The Postal Service summarizes the benefits to be gained from adopting Proposal Four. It asserts that the proposal would more closely align revenue, pieces, and weight reported in the Inbound International RPW with current-year activity; that it would report such information at a greater level of detail than is done currently (including volume and weight information for the first time); that it would separate current-year revenue from prior-year revenue and currency gains and losses; and that it would correct some current misreporting of inbound product data as outbound. *Id.* at 4.

The Postal Service illustrates the impact of Proposal Four in Attachments B and C to the Petition. It asserts that the impacts would be minor, and would be confined to Inbound International Mail. *Id.* at 10–12.

Proposal Five: Assigning Flats Sequencing System (FSS) and Automated Flats Sorting Machine (AFSM) 100 Data to Separate Cost Pools. Currently, cost data for FSS operations are assigned to cost pools for the AFSM 100 3-digit Management Operating Data System (MODS) operation. Proposal Five would assign FSS cost data to FSS-specific cost pools. The Postal Service supports the separate break out of FSS costs by noting that the FSS is a major new flats processing system that is becoming widely deployed. It also notes that the mail mix in FSS operations can differ from that in AFSM 100 operations because FSS can be used to sequence non-saturation carrier route flats, which would bypass AFSM 100 operations. *Id.* at 13.

Proposal Five would assign the Stand-Alone Mail Prep machine (MODS operation 530) operation and the FSS Sorter (MODS operation 538) distribution operations to the same cost pool. The Postal Service argues that they are interrelated in the same manner that the prep operations for the AFSM 100 (MODS operation 140) and the AFSM 100/Automated Induction distribution

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals Four–Eight), August 8, 2011 (Petition).

[2] *Id.* at 8. As examples, the Postal Service notes that Inbound Return Receipt and Inbound Restricted Delivery are currently misreported as part of Outbound Ancillary Services, and that its proposed mapping would correct this. *Id.* at 5.

operation are interrelated. It notes that assigning FSS operations to cost pools separate from AFSM cost pools would affect cost tracking not just in MODS processing plants, but in Network Distribution Centers (NDCs) as well. *Id.* at 13–14.

The Postal Service asserts that there are insufficient data in FY 2010 to estimate the impact of separating FSS and AFSM 100 operations into separate cost pools. *Id.* at 14.

Proposal Six: Disaggregating the cost pools in Non-MODS post offices. Cost pools for post offices in the MODS system are defined by Labor Distribution Codes or MODS operation number. They are generally more disaggregated than the cost pools in non-MODS post offices. Those cost pools are defined by activity data recorded in In-Office Cost System (IOCS) Question 18. According to the Postal Service, responses to IOCS Question 18 can be used to identify additional activities in non-MODS post offices that correspond to cost pools in MODS post offices. Proposal Six would add several cost pools to non-MODS post offices that have analogues in MODS post offices. The new proposed cost pools are listed at page 18 of the Petition.

The Postal Service says that disaggregating cost pools in non-MODS post offices to more closely resemble those in MODS post offices will make it easier to analyze the cost of certain post office activities without having to use special studies to disaggregate the non-MODS cost pools. As an example, the Postal Service asserts that separating the sorting of mail to a post office box from other manual distribution activities would make it easier to distinguish shape-related work from mixed-shape work at box sections. Similarly, it asserts that the costs of reply mail and special services will not be over-stated if postage due and other accountable mail work were to be separated from miscellaneous processing that is unrelated to reply mail or special services. *Id.* at 17.

Proposal Six would primarily impact certain special services. Those impacts are shown in Excel file "Props6&7.Mail.Proc.Impact.xls" attached to the Petition.

Proposal Seven: Changing distribution keys for mixed mail costs in Allied Cost Pools in MODS processing plants. Prior to Docket No. R97–1, mail processing was broken down into broad functions (outgoing, incoming, and transit). The disaggregation of these broad mail processing cost functions into roughly 40 distinct 3-digit MODS operations raised concerns that there were biases in the frequency with which IOCS tally takers can directly identify a specific product as having been handled in an operation, and the frequency with which they can only identify mixed mail as having been handled in that operation. For example, using the product distribution of direct tallies as a proxy for the product distribution of mixed mail tallies could be biased if the presence of some products in a given operation is more easily identified than the presence of other products because of the manner in which they are packaged and presented to the Postal Service.[3] *Id.* at 18.

The risk of over-identification bias seems greatest for allied operations in MODS processing plants. In allied operations, the proportion of direct tallies to mixed mail tallies is relatively low because mail is often handled in mixed-product containers. To avoid the risk of over-identification bias, the Commission recommended in Docket No. R97–1 that the cost associated with mixed mail tallies in allied MODS operations be distributed to products in proportion to all direct tallies recorded within a facility group, rather than the direct tallies recorded within a given MODS operation. *See* PRC Op. R97–1, ¶¶ 3145–46. This distribution key is called the "all pools" key because it includes the direct tallies from all operations in the facility group. Using the "all pools" key, mixed mail costs associated with allied labor in MODS processing plants are currently distributed in proportion to direct tallies from all MODS cost pools; mixed mail costs associated with allied labor in NDCs are distributed in proportion to direct tallies from all NDC cost pools; and mixed mail costs associated with allied labor in non-MODS offices are distributed in proportion to direct tallies from all non-MODS cost pools. *Id.* at 18–19.

For the MODS office group, the "all pools" key includes direct tallies from mail processing operations at MODS post offices and mail processing operations at International Service Centers (ISCs). The Postal Service asserts that including these tallies in the "all pools" key makes that key less representative of the actual incidence of products that are handled in mixed mail form in allied operations. Therefore, it argues, these direct tallies should be excluded from the key. *Id.* at 20–21.

The Postal Service argues that including direct tallies from MODS post offices in the "all pools" key is a likely source of bias because, as destination delivery units (DDUs), those offices handle a substantial amount of "bypass" mail. "Bypass" mail includes mail that avoids processing plants because it is dropshipped directly to DDUs. Examples of mail processing activities at the DDU that involve "bypass" mail include separating bundles from direct DDU pallets or incoming secondary sorting of Package Service mail. The Postal Service reasons that the IOCS tally taker can easily associate such activity with a single product, making it likely that it generates direct tallies when observed at MODS DDUs at greater frequency than those same products are likely to appear as mixed mail in allied operations at MODS processing plants. *Id.* at 19–20. Therefore, the Postal Service contends, removing direct tallies recorded at MODS post offices from the "all pools" distribution key is likely to reduce bias in that key.

The Postal Service notes that removing direct tallies recorded at MODS post offices from the "all pools" key would make the treatment of those direct tallies consistent with the treatment direct tallies recorded at non-MODS post offices. Direct tallies from non-MODS post offices are currently excluded from the "all pools" key. *Id.* at 20.

An ISC is a facility that specializes in processing International Mail. The Postal Service argues that including direct tallies from an ISC in the "all pools" key is a likely source of bias because an ISC processes some products that are not handled at MODS processing plants. It notes that those products are more likely to be processed manually, and therefore are likely to generate direct tallies at greater frequency than those same products would appear in mixed mail form at MODS processing plants. Therefore, it argues, removing direct tallies observed at ISCs is likely to reduce bias in the "all pools" key. *Id.*

The Postal Service states that the benefit of reducing bias in the "all pools" key as Proposal Seven would do is likely to outweigh the potential loss of information about the contents of mixed mail at processing plants. *Id.* at 21.

The Postal Service estimates the impact of Proposal Seven in Tab "P7.Allied Mixed Mail Impact" of the Excel file "Props6&7.Mail.Proc.Impact.xls." It notes that Proposal Seven would shift costs between products, but would have no affect on the variability of those product costs. *Id.* at 21–22.

Proposal Eight: Dropping the assumption that all Express Mail is

[3] *See, e.g.*, the rebuttal testimony of Halstein Stralberg (TW–TR–1) in Docket No. R97–1.

Accountable Mail. In the City Carrier Cost System (CCCS), "accountable" mailpieces are defined as pieces that require customer contact. Currently, all Express Mail pieces delivered on letter routes are treated as accountable pieces. This stems from what was standard procedure in delivering Express Mail, which was to attempt to contact the customer regardless of the "Signature Waiver" option. This is no longer standard procedure, according to the Postal Service. Now, it explains, "Signature Waiver" Express Mail is scanned and then either placed in the mail receptacle or left "in a secure location." *Id.* at 23. The CCCS "Signature Waiver" data element now identifies whether "Signature Waiver" Express Mail was placed in the receptacle, left in a secure place, or resulted in customer contact. Proposal Seven would recognize these distinctions, thereby reducing the proportion of Express Mail that is "accountable" mail. *Id.* Although Proposal Seven would remove some Express Mail from the accountable mail cost pool, the cost of scanning the Express Mail removed would be included with the cost of that mail. *Id.* at 24.

The Postal Service estimates that Proposal Seven would reduce the cost of Express Mail by three-tenths of a percent, and increase the cost of other products by up to two-tenths of a percent. *Id.*

The Petition, Attachments, and Library References estimating the impact of Proposals Four through Eight are available for review on the Commission's Web site, *http://www.prc.gov.* In several instances, the Postal Service's documentation of its impact estimates fails to demonstrate how those estimates were derived. The Postal Service will be directed to provide all spreadsheets and computer programs that are needed to derive the estimates that it has provided in connection with the Petition.

Pursuant to 39 U.S.C. 505, Natalie Ward is designated as Public Representative to represent the interests of the general public in this proceeding. Comments are due no later than September 9, 2011.

It is ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals Four–Eight), filed August 8, 2011, is granted.

2. The Commission establishes Docket No. RM2011–12 to consider the matters raised by the Postal Service's Petition.

3. The Postal Service is directed to provide all spreadsheets and computer programs that are needed to derive the estimates that it has provided in connection with its Petition no later than August 22, 2011.

4. Interested persons may submit comments on Proposals Four through Eight no later than September 9, 2011.

5. The Commission will determine the need for reply comments after review of the initial comments.

6. Natalie Ward is appointed to serve as the Public Representative to represent the interests of the general public in this proceeding.

7. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–21581 Filed 8–23–11; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0509; FRL–9453–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision includes amendments to the Commonwealth of Pennsylvania regulation 25 *Pa. Code* Chapter 129 (relating to standards for sources) and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for large appliance and metal furniture coatings. In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 23, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0509, by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2011–0509, 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–2011–0509. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Adoption of Control Techniques Guidelines for Large Appliance and Metal Furniture Coatings," that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–21363 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 236

[Docket No. FRA–2011–0028, Notice No. 1]

RIN 2130–AC27

Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes amendments to the regulations implementing a provision of the Rail Safety Improvement Act of 2008 that requires certain passenger and freight railroads to install positive train control (PTC) systems. This notice proposes the removal of various regulatory requirements that require railroads to either conduct further analyses or meet certain risk-based criteria in order to avoid PTC system implementation on track segments that do not transport poison- or toxic-by-inhalation (PIH) hazardous materials traffic and are not used for intercity or commuter rail passenger transportation as of December 31, 2015.

DATES: (1) Written comments must be received by October 24, 2011. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to September 23, 2011, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2011–0028, may be submitted by any of the following methods:

- *Web Site:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 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.

FOR FURTHER INFORMATION CONTACT: Thomas McFarlin, Office of Safety Assurance and Compliance, Staff Director, Signal & Train Control Division, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W35–332, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–6203); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–207, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–6032).

SUPPLEMENTARY INFORMATION: FRA is issuing this proposed rule to amend the regulatory requirements contained in 49 CFR part 236, subpart I, related to a railroad's ability to remove track segments from the necessity of implementing PTC as mandated by Section 104 of the Railroad Safety Improvement Act of 2008, Public Law 110–432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 49 U.S.C. 20157) (hereinafter "RSIA") based on the track segments not carrying PIH traffic as of December 31, 2015.

Table of Contents for Supplementary Information

I. Executive Summary

For years, FRA has supported the nationwide proliferation and implementation of positive train control (PTC) systems, forecasting substantial benefits of advanced train control technology in supporting a variety of business and safety purposes. However, FRA repetitively noted that an immediate regulatory mandate for PTC system implementation could not be justified based upon normal cost-benefit principals relying on direct safety

benefits. In 2005, FRA promulgated regulations providing for the voluntary implementation of processor-based train control systems. See 70 FR 11,052 (Mar. 7, 2005) (codified at 49 CFR part 236, subpart H).

As a consequence of the number and severity of certain very public accidents, coupled with a series of other less publicized accidents, Congress passed RSIA mandating the implementation of PTC systems on lines meeting certain thresholds. RSIA requires PTC system implementation on all Class I railroad lines that carry PIH materials and 5 million gross tons or more of annual traffic, and on any railroad's main line tracks over which intercity or commuter rail passenger train service is regularly provided. In addition, RSIA provided FRA with the authority to require PTC system implementation on any other line.

In accordance with its statutory authority, FRA's subsequent final rule, issued January 15, 2010, and amended on September 27, 2010, potentially required PTC system implementation on certain track segments that carried PIH traffic and 5 million gross tons or more of annual traffic in 2008 but that will not carry PIH traffic, and will not be used for intercity or commuter rail passenger transportation, as of December 31, 2015. Per the regulation, the determination would be based upon whether the subject track segment would pass what has been called the alternative route analysis and the residual risk analysis (the "two qualifying tests").

Upon issuance of the PTC final rule, the Association of American Railroads (AAR) filed suit in the U.S. Court of Appeals for the District of Columbia Circuit challenging the two qualifying tests provisions of the final rule. After the parties filed their briefs, they executed a settlement agreement (Settlement Agreement). In the Settlement Agreement, FRA agreed to issue a notice of proposed rulemaking (NPRM) proposing to amend the PTC rule to eliminate the two qualifying tests; this NPRM fulfills this requirement. The Settlement Agreement further provided that FRA would consider public comments on the NPRM in determining whether to amend the PTC rule.

For the first 20 years of the proposed rule, the estimated quantified benefits to the industry due to the proposed regulatory relief total approximately $620 million discounted at 7 percent and $818 million discounted at 3 percent. Substantial cost savings would accrue largely from not installing PTC system wayside components along approximately 10,000 miles of track. Although these rail lines would forego some risk reduction, the reductions would likely be small since these lines pose a much lower risk of accidents because they generally do not carry passenger trains or PIH materials and generally have lower accident exposure. The analysis shows that if the assumptions are correct, the savings of the proposed action far outweigh the cost. The following table presents the quantified benefits:

BENEFITS

[20-year, discounted]

Costs avoided	7% Discount	3% Discount
Reduced Mitigation Costs, Including Maintenance	$91,793,822	$121,119,324
Reduced Wayside Costs, Including Maintenance	515,695,631	680,445,643
Reduced Locomotive Costs, Including Maintenance	12,479,834	16,466,785
Total Benefits	619,969,287	818,031,752

For the same 20-year period, the estimated quantified cost totals $26.7 million discounted at 7 percent and $39.3 million discounted at 3 percent. The costs associated with the proposed regulatory relief result from the reduction of safety benefits in the form of accident reduction due to the affected track segments not being equipped with a PTC system. A substantial part of the accident reduction that FRA expects from PTC systems currently required comes from reducing high-consequence accidents involving passenger trains or the release of PIH materials. FRA believes that the lines impacted by this proposal pose significantly less risk because they generally do not carry passenger trains or PIH materials and generally have lower accident exposure. The following tables present the total costs of the proposed rule as well as the breakdown of the costs by element:

COSTS

[20-year, discounted]

Foregone reductions in	7% Discount	3% Discount
Fatality Prevention	$11,453,106	$16,860,327
Injury Prevention	4,254,484	6,263,104
Train Delay	117,793	173,406
Property Damage	10,163,835	14,962,367
Equipment Cleanup	143,273	210,915
Environmental Cleanup	430,995	634,475
Evacuations	138,780	204,301
Total Costs	26,702,267	39,308,896

FRA has also performed a sensitivity analysis for a high case (14,000 miles), expected case (10,000 miles), and low case (7,000 miles).

The net amounts for each case, subtracting the costs from the benefits, provide the following results:

Net societal benefits	7% Discount	3% Discount
Expected Case (10,000 miles)	$593,267,020	$778,722,856
High Case (14,000 miles)	793,856,299	1,041,764,269
Low Case (7,000 miles)	442,825,061	581,441,797

Further, the benefit-cost ratios under the scenarios analyzed range between 20:1 and 25:1.

Benefit-cost ratio	7% Discount	3% Discount
Expected Case	23.22	20.81
High Case	22.24	19.93
Low Case	24.69	22.13

II. Background

A. Regulatory History

As a consequence of the number and severity of certain widely publicized accidents, coupled with a series of other accidents receiving less media attention, Congress passed RSIA, mandating implementation of PTC systems by December 31, 2015. 75 FR 2598 (Jan. 15, 2010). Under RSIA, such PTC implementation must be completed by each Class I railroad carrier and each entity providing regularly scheduled intercity or commuter rail passenger transportation on:

(A) Its main line over which intercity rail passenger transportation or commuter rail passenger transportation, as defined in section 24102, is regularly provided;

(B) its main line over which PIH or TIH hazardous materials, as defined in parts 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations, are transported; and

(C) such other tracks as the Secretary may prescribe by regulation or order.

49 U.S.C. 20157(a)(1). The statute further defined "main line" to mean:

A segment or route of railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually, except that—

(A) The Secretary may, through regulations under subsection (g), designate additional tracks as main line as appropriate for this section; and

(B) for intercity rail passenger transportation or commuter rail passenger transportation routes or segments over which limited or no freight railroad operations occur, the Secretary shall define the term "main line" by regulation.

49 U.S.C. 20157(i)(2). To effectuate this goal, RSIA required the railroads to submit for FRA approval a PTC Implementation Plan (PTCIP) within 18 months (*i.e.*, by April 16, 2010).

Consistent with this statutory mandate, FRA published a final rule with a request for further comments on January 15, 2010, which established new regulations codified primarily in subpart I to 49 CFR part 236 (the "PTC rule"). Subsequently, FRA received a number of petitions for reconsideration to the final rule and a number of comments responding to the request for further comments. In a letter dated July 8, 2010, FRA denied all of the petitions for reconsideration. On September 27, 2010, FRA issued a new final rule with clarifying amendments to the PTC rule.

Under the current regulations applicable to the existing railroads, each PTCIP must have included the sequence and schedule in which track segments required to be equipped with PTC will be so equipped and the basis for those decisions. *See* 49 CFR 236.1011. This list of track segments must have included all track segments that fit the statutory criteria in calendar year 2008. *See* 49 CFR 236.1005(b)(1) and (b)(2).

While the statutory PTC implementation deadline is December 31, 2015, FRA recognized a need for a starting point in time to determine where such implementation must occur. The final rule indicates that such a starting baseline should be based on the facts and data known in calendar year (CY) 2008 (the "2008 baseline"). FRA determined that using CY 2009 data would have been difficult given the proximity to the PTCIP submission deadline and the notably atypical traffic levels caused by the down turn in the economy. Although each railroad's initial PTCIP includes a future PTC implementation route map reflecting 2008 data, FRA recognized that traffic levels and PIH routings could change in the period between the end of 2008 and the start of 2016. Accordingly, in the event of changed circumstances, the PTC rule provides railroads with the option to file a request for amendment (RFA) of its PTCIP to not equip a track segment that the railroad was initially, but may no longer be, required to implement a PTC system. If a particular track segment included in a PTCIP will no longer carry PIH traffic by the statutory implementation deadline, and its PTC system implementation is scheduled, but not yet effectuated, then the host railroad might avoid actual PTC system implementation by filing a supported RFA for FRA approval. Each such RFA must be supported with the data defined under § 236.1005(b)(2) and (b)(4)(i), and satisfy the two qualifying tests that were promulgated under FRA's statutory authority to require PTC to be installed on lines in addition to those required to be equipped by RSIA. If a track segment fails either of these tests, FRA would deny the request, thus requiring PTC system implementation on the track segment.

The first test, proverbially known as the "alternative route analysis test," was initially codified at § 236.1005(b)(4)(i)(A) and subsequently moved to a new § 236.1020. Under this test, the railroad must establish that current or prospective rerouting of PIH materials traffic to one or more alternative track segments is justified. If a railroad reroutes all PIH materials off of a track segment requiring PTC system implementation under the 2008 baseline, and onto a new line, PTC system implementation on the initial line may not be required if the new line would have substantially the same overall safety and security risk as the initial line, assuming PTC implementation on both lines. If the initial track segment, despite the elimination of all PIH materials traffic, is determined to pose higher overall safety and security risks under this analysis, then a PTC system must still be installed on that initial track segment. PTC system implementation may also be required on the new line if it meets the 5 million gross ton of annual traffic threshold and does not qualify under the *de minimis* exception of the rule.

The second test that the railroad must satisfy in order to avoid having to install a PTC system on a track segment requiring implementation under the 2008 baseline is the so-called "residual risk test." Under this test, the railroad must show that, without a PTC system, the remaining risk on the track segment—pertaining to events that can be prevented or mitigated in severity by a PTC system—is less than the national average equivalent risk per route mile on track segments required to be equipped with PTC systems due to statutory reasons other than passenger traffic presence. When FRA issued its PTC rule amendments on September 27, 2010, FRA indicated that it was

delaying the effective date of 49 CFR 236.1005(b)(4)(i)(A)(*2*)(*iii*), as revised under § 236.1020, pending the completion of a separate rulemaking to establish how residual risk is to be determined.

B. Litigation, Executive Order 13563, and Congressional Hearings

After FRA issued its PTC final rule on January 15, 2010, and denied reconsideration on July 8, 2010, the AAR filed a petition for review of the rule with the U.S. Court of Appeals for the District of Columbia. Once FRA issued its PTC final rule amendments, AAR filed another petition for review of those amendments on October 5, 2010. The court consolidated those two petitions on October 22, 2010 (collectively, "Petition for Review").

In its brief, AAR challenged FRA's determination to use 2008 as the baseline year, arguing that it rests on a fundamental legal error and was arbitrary and capricious. After the parties fully briefed the issues, President Obama issued Executive Order 13563 on January 18, 2011 (76 FR 3821 (Jan. 21, 2011)), which outlined a plan to improve regulations and regulatory review. According to the Order, it is intended to reaffirm and build upon governing principles of contemporary regulatory review, including Executive Order 12866 (Sept. 30, 1993), by requiring federal agencies when issuing safety regulations to design the regulations so that they are cost-effective, evidence-based, and compatible with economic growth, job creation, and competitiveness. The President's plan recognizes that these principles apply to both new and existing regulations. To that end, Executive Order 13563 requires agencies to review existing significant regulations to determine if they are outmoded, ineffective, insufficient, or excessively burdensome. FRA recognizes that the costs associated with PTC rule compliance outweigh the safety benefits by 20-to-1 and, therefore, it is appropriate to reexamine whether FRA should be requiring the installation of PTC on lines that will not be carrying PIH traffic or regularly scheduled passenger service as of December 31, 2015.

FRA and AAR entered into the Settlement Agreement on March 2, 2011. The terms and conditions of the Settlement Agreement included the joint filing of a motion to hold the Petition for Review in abeyance pending the completion of this rulemaking. That motion was filed on March 2, 2011, and was granted by the court on March 3, 2011.

The Settlement Agreement provides that FRA will issue two NPRMs. The first NPRM is to address whether the PTC rule should be amended by eliminating the two aforementioned tests that would potentially require PTC to be installed on track segments not specifically required to be equipped by Congress. This NPRM meets that requirement. The Settlement Agreement provides that upon the completion of this rulemaking proceeding, the parties will determine whether to file a joint motion to dismiss the lawsuit in its entirety. The Settlement Agreement also states that FRA is to issue a separate NPRM that will address the issues of how to handle en-route failures of PTC-equipped trains, circumstances under which a signal system may be removed after PTC installation, and whether yard movements and certain other train movements should qualify for a *de minimis* risk exception to the PTC rule. The second NPRM will also address any other issues that might be raised by interested parties in a properly filed petition for rulemaking under 49 CFR part 211. The Settlement Agreement notes that FRA will consider all comments submitted during the rulemaking comment periods on each of those NPRMs in determining whether to issue amendments to the PTC rule and, if so, the contents of those amendments. Although this NPRM and its associated regulatory impact analysis seek comments relating to the two qualifying tests, it does not seek comments on the issues that will be reserved for the other forthcoming NPRM.

On March 17, 2011, FRA and AAR testified before the Subcommittee on Railroads, Pipelines, and Hazardous Materials, Committee on Transportation and Infrastructure, U.S. House of Representatives. In addition to reporting on the Settlement Agreement, FRA's testimony discussed PTC system implementation planning and progress made thus far and highlighted the various ways that FRA has assisted the industry in meeting the statutory and regulatory goals. In particular, FRA has supported PTC implementation by developing and approving certain implementation exceptions, providing technical assistance, and granting financial assistance.

During its testimony, made jointly with Norfolk Southern Railway (NS), AAR asserted that, "If unchanged, the 2008 base-year provision means railroads would have to spend more than $500 million in the next few years to deploy PTC on more than 10,000 miles of rail lines on which neither passenger nor TIH materials will be moving in 2015." [1] FRA understands AAR to assume that these 10,000 miles would still require PTC implementation because they would not be able to pass the alternative route analysis and residual risk analysis tests. If this is not correct, FRA seeks AAR's clarification. However, upon its own analysis, FRA assumes that 50 percent of the 10,000 miles would be able to pass both tests with the implementation of mitigation measures. FRA seeks comment on this assumption.

Under the regulatory impact analysis (RIA) that accompanied the PTC final rule, FRA estimated that the railroads would need to implement PTC systems on approximately 70,000 miles of track. However, PTC system implementation could be avoided on 3,204 miles of those 70,000 miles of track because PIH materials traffic will have ceased by 2015 and the subject track segments would pass the residual risk analysis and alternative route analysis tests. During the earlier rulemakings, no entity, including AAR and NS, challenged or otherwise commented on these conclusions.

FRA also estimated that PTC system implementation could be avoided on 304 miles of track because gross tonnage will fall below 5 million gross tons per year, or passenger service would end so that neither of the two tests above would apply. Between the two categories, FRA estimated that railroads could exclude more than 3,500 miles. Assuming that the 3,500 miles represents about 50% of those tracks where PIH materials traffic will have ceased, FRA was implicitly estimating that there would be about 7,000 miles of track where PIH materials traffic will have ceased. The AAR and its members appear to have been more effective in the future reduction of PIH materials traffic than FRA had initially estimated based on AAR's congressional testimony and subsequent submissions to FRA. In its analysis of this NPRM, FRA estimates that PIH traffic will cease on 10,000 miles of track on which PTC systems would have been required had the traffic not ceased. FRA considers cases where 7,000 miles, 10,000 miles and, for sensitivity, 14,000 miles of track might be excluded from PTC requirements because of changes in PIH traffic. As FRA was completing its

[1] *Hearing Before the Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Transportation and Infrastructure Committee*, U.S. House of Representatives, 112th Cong. (2011) (Joint statement of Edward R. Hamberger, President and Chief Executive Officer of the AAR, and Mark D. Manion, Executive Vice President and Chief Operating Officer of the Norfolk Southern Railway, on behalf of the AAR's member railroads) [hereinafter AAR Congressional Testimony].

analysis of this proposal, AAR submitted data that indicates its member railroads believe that they can cease PIH traffic on 11,128 miles of track, of which 9,566 miles have no passenger traffic. Some of the passenger traffic miles may later qualify for exclusion from the system on which PTC is required. For more discussion of those miles from which PIH traffic is removed, but on which passenger traffic remains, see FRA's Regulatory Impact Assessment, in this rulemaking docket. FRA seeks comments and information on the accuracy and likelihood of estimated changes in PIH traffic.

III. Section-by-Section Analysis

Unless otherwise noted, all section references below refer to sections in title 49 of the Code of Federal Regulations (CFR). FRA seeks comments on all proposals made in this NPRM.

Proposed Amendments to 49 CFR Part 236

Section 236.1003 Definitions

FRA currently defines PIH materials within the rule text at § 236.1005(b)(1)(i), which some may find difficult to locate. Accordingly, for the purposes of clarity, FRA proposes to add the definition for PIH materials to the definitions section of subpart I. The inclusion of this definition in § 236.1003 would not change the meaning of the term as understood under § 236.1005(b)(1)(i) or its cross-referenced §§ 171.8, 173.115, and 173.132.

Section 236.1005 Requirements for Positive Train Control Systems

In this NPRM, FRA is proposing the elimination of the alternative route analysis and the residual risk analysis tests. When initially published in the PTC rule on January 15, 2010, these provisions were included in § 236.1005(b). On September 27, 2010, FRA issued amendments to the PTC rule, moving the text to a new § 236.1020 and providing more clarifying language. To ensure continuity and understanding, however, § 236.1005 contained various cross-references to § 236.1020. As indicated below, FRA is proposing to eliminate § 236.1020. Accordingly, FRA also proposes rule text changes to § 236.1005 by removing those cross-references.

Section 236.1020 Exclusion of Track Segments for Implementation Due to Cessation of PIH Materials Traffic

As previously noted, the current PTC rule requires that, for each RFA seeking to exclude a track segment from PTC system implementation due to the cessation of PIH materials traffic, a railroad must satisfy both an alternative route analysis, and eventually a residual risk analysis test, in order to secure FRA's approval. FRA's cost benefit analysis of the PTC rule indicates that the railroads will incur approximately $20 in PTC costs for each $1 in PTC safety benefits. In its congressional testimony, AAR testified that 2010 was the safest year for America's railroads, that railroads have lower employee injury rates than most other major industries, that only around 4 percent of all train accidents on Class I main lines are likely to be prevented by PTC systems, and that there are many far less costly ways to provide greater improvements in rail safety than through the implementation of PTC systems on lines not required by Congress to be equipped.[2] According to the testimony, if the PTC rule remains unchanged, railroads may be required to spend more than $500 million in the next few years to deploy PTC systems on more than 10,000 miles of rail lines on which neither passengers nor PIH materials will be transported as of December 31, 2015.

While FRA believes that the alternative route analysis and residual risk tests are legally sustainable, it recognizes that these tests could potentially require the installation of PTC systems at a great cost to the railroads. FRA also recognizes that the railroads have much work to do to have interoperable PTC systems installed in accordance with the congressional mandate. FRA is, therefore, proposing to eliminate the tests that would potentially require the installation of PTC systems on lines not specifically mandated by Congress.

FRA seeks comments from interested parties on the proposed removal of the alternative route analysis from the PTC rule. FRA also seeks comments on the proposed removal of the residual risk analysis. If FRA were to remove these requirements, it proposes doing so by eliminating § 236.1020 as it currently exists. While FRA is proposing the removal of these analyses from the PTC rule, FRA reserves its statutory and regulatory authority to require PTC system implementation on additional track segments in the future based on risk levels or other rational bases.

[2] *See* AAR Congressional Testimony, at 8–9.

IV. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under Executive Order 12866, Executive Order 13563 and DOT policies and procedures. 44 FR 11,034 (Feb. 26, 1979). We have prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this NPRM. FRA is proposing the removal of various regulatory requirements that require railroads to meet two tests in order to avoid PTC system implementation on track segments that were used to transport PIH traffic and carried five million gross tons of annual traffic in 2008, but that will not transport PIH materials traffic and the applicable passenger traffic as of December 31, 2015. Substantial cost savings would accrue largely from not installing PTC system wayside components or other mitigations along approximately 10,000 miles of track. Although these rail lines would forego some risk reduction, the reductions would likely be small since these lines pose a much lower risk of accidents because they generally do not carry passenger trains or PIH materials and generally have lower accident frequency and severity, because the lines have relatively lower traffic volumes than the average segment on which PTC systems will be required, based on FRA's review of the data submitted by AAR. The analysis shows that if the assumptions are correct, the savings to the industry in the form of regulatory relief as proposed far outweigh the cost associated with increased accident exposure.

The largest part of the cost savings benefit comes from reducing the extent of wayside that must be equipped with PTC. Some of these lines would have qualified for exemption by passing the two tests contained in the 2010 PTC final rule, while others may not have. In addition, benefits would come from reducing the number of locomotives belonging to Class II and Class III (small) railroads that must be equipped with PTC systems, because they run on Class I railroads' track that will no longer need to be equipped with PTC systems. Although these benefits would be small relative to the wayside equipment savings, they would be large relative to the size of the railroads being impacted. The tables below present the total estimated cost savings benefits of the proposed rule, assuming installation or

additional mitigation measures would no longer be required along 10,000 miles of track. The analysis assumes that 5,000 miles of track would have passed both tests with some mitigation measures being taken, and the remaining 5,000 miles would not have passed both tests and would have required PTC system implementation under the current rules.

BENEFITS

[20-year, discounted]

Costs avoided	7% Discount	3% Discount
Reduced Mitigation Costs, Including Maintenance	$91,793,822	$121,119,324
Reduced Wayside Costs, Including Maintenance	515,695,631	680,445,643
Reduced Locomotive Costs, Including Maintenance	12,479,834	16,466,785
Total Benefits	619,969,287	818,031,752

Total costs may also be broken down into initial investment and maintenance costs. Although railroads may already have spent money to install and maintain PTC systems, FRA assumes here that those funds have not been spent on the lines considered here, as they tend to be lower volume, lower priority lines, and FRA assumes that the railroads would not install PTC systems on those lines until 2014, at the earliest, in the absence of this rulemaking. FRA seeks comment on this assumption. FRA estimates that avoiding installation on 10,000 miles would let railroads avoid $300.5 million in initial installation costs (not discounted). Maintenance cost savings would total $366.0 million (discounted at 7%) or $538.9 million (discounted at 3%). Maintenance includes all of the activities and subsequent purchases needed to operate the PTC system over its life-cycle, and to maintain its proper functioning, reliability, and availability. Maintenance includes training, system inspection, testing, adjustments, repair, and replacement of components. Replacement components can be very expensive in processor-based systems with relatively small installed bases, such as PTC. PTC systems are not installed in great enough numbers to justify a processor manufacturer making a processor just for PTC. PTC systems developers must use standard processors, and over time those processors usually become obsolete and are no longer supported or manufactured. Then the PTC system developer must redesign and re-test the PTC system to ensure it will continue to operate safely and reliably with the new processor.

Costs associated with the proposed regulatory relief will come from reducing the potential for accident reduction. A substantial part of the accident reduction that FRA expects from PTC systems currently required comes from reducing high-consequence accidents involving passenger trains or the release of PIH materials. FRA believes that the track segments impacted by this proposal pose significantly less risk because they generally do not carry passenger trains or PIH materials and generally have lower accident frequency and severity, as discussed above, because the lines have relatively lower traffic volumes and track speeds than the average segment on which PTC systems will be required, based on FRA's review of the data submitted by AAR. The following tables present the total costs of the proposed rule as well as the breakdown of the costs by element.

COSTS

[20-year, discounted]

Foregone reductions in	7% Discount	3% Discount
Fatality Prevention	$11,453,106	$16,860,327
Injury Prevention	4,254,484	6,263,104
Train Delay	117,793	173,406
Property Damage	10,163,835	14,962,367
Equipment Cleanup	143,273	210,915
Environmental Cleanup	430,995	634,475
Evacuations	138,780	204,301
Total Costs	26,702,267	39,308,896

The 20-year discounted net benefits (subtracting the costs from the benefits) are expected to be $590 million over 20 years, discounted at 7 percent per year; and $780 million over 20 years, discounted at 3 percent per year. The timing of benefits and costs are such that a large benefit in terms of capital investment is avoided in early years, while the benefit of avoided maintenance and the disbenefit (costs) of accidents not avoided would be realized annually in later years. FRA also assessed the sensitivity of the analysis with respect to scenarios in which railroads may only be able to get relief for 7,000 miles of track and in which railroads may get relief on as many as 14,000 miles of track. Each of these assumes that 50% of the track miles would have passed both tests with some mitigation measures being taken, and that the remaining 50% of the track miles would not have passed both tests and would have required PTC system implementation under the current rules. Such scenarios also show net benefits.

Net societal benefits	7% Discount	3% Discount
Expected Case (10,000 miles)	$593,267,020	$778,722,856

Net societal benefits	7% Discount	3% Discount
High Case (14,000 miles)	793,856,299	1,041,764,269
Low Case (7,000 miles)	442,825,061	581,441,797

Further, the benefit-cost ratios under the scenarios analyzed range between 20:1 and 25:1.

Benefit-cost ratio	7% Discount	3% Discount
Expected Case	23.22	20.81
High Case	22.24	19.93
Low Case	24.69	22.13

The FRA invites comments on all aspects of this analysis, including any costs and benefits regarding this NPRM that may not have been considered in this analysis, and particularly seeks comments on the time frame for installation, maintenance, and realization of costs and benefits.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure that the potential impact of this rulemaking on small entities is properly considered, FRA developed this proposed rule in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

As discussed in earlier sections of this preamble, FRA is proposing to amend the regulations implementing a provision of RSIA that requires certain passenger and freight railroads to install PTC systems. Specifically, FRA is proposing the removal of various regulatory requirements that require railroads to either conduct further analyses or meet certain risk-based criteria in order to avoid PTC system implementation on track segments that carried PIH traffic and 5 million or more gross tons of traffic in 2008 but that will not carry PIH hazardous materials traffic as of December 31, 2015.

FRA is certifying that this proposed rule will result in "no significant economic impact on a substantial number of small entities." The following section explains the reasons for this certification.

1. Description of Regulated Entities and Impacts

The "universe" of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. In this case, the "universe" would be Class III freight railroads that operate on rail lines that are currently required to have PTC systems installed. Such lines are owned by railroads not considered to be small.

The U.S. Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity," is 1,500 employees for "Line Haul Operating Railroads" and 500 employees for "Switching and Terminal Establishments." "Small entity" is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. Additionally, section 601(5) defines "small entities" as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes "small entities" as railroads which meet the line haulage revenue requirements of a Class III railroad.[3] The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment)[4] is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA is using the STB's threshold in its definition of "small entities" for this rule.

The proposed regulation would impact Class III railroads that operate on lines of other railroads currently required to have PTC systems installed. To the extent that such host railroads receive relief from such a requirement along certain lines as proposed in this NPRM, Class III railroads that operate over those lines would not have to equip their locomotives with PTC system components. FRA believes that elimination of the two tests for relief from the requirement to install PTC systems as proposed would in effect result in PTC systems not being installed on track segments totaling over 10,000 miles in length. Approximately five small railroads operate locomotives on lines currently required to be equipped with PTC systems, but that would receive relief under the proposed rule. In addition, two Class III railroads operate over railroad crossings (diamonds) that intersect tracks required to be equipped with PTC systems in the absence of changes proposed in this notice. The total of seven affected Class III railroads is not a substantial number of small entities, given that there are 674 small railroads. If this FRA proposal becomes effective, Class III railroads would avoid equipping 28 locomotives with PTC onboard apparatuses at a cost savings of $55,000 per locomotive initially plus maintenance of the PTC equipment. In addition, a Class III railroad would avoid paying for PTC system installation at one railroad-to-railroad crossing, at an initial cost of $80,000 plus annual maintenance. Finally, Class III railroads would avoid operational costs associated with having to reduce operating speeds to cross over two railroad-to-railroad crossings at an annual cost of $43,800. The unit costs presented above for installing PTC systems on locomotives, and at railroad-to-railroad crossings, and the operational costs of operating over a crossing at reduced speed are the values used in the Regulatory Flexibility Analysis of the PTC final rule issued January 15, 2010, and can be found in the docket for that rulemaking. The changes FRA is proposing would benefit the small entities impacted. FRA requests comment on whether the impacts on them would be significant and whether the number of small railroads affected is substantial. The seven railroads affected do not represent a substantial number of railroads out of more than approximately 600 Class III railroads.

2. Certification

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule would not have a significant economic impact on a

[3] *See* 68 FR 24891 (May 9, 2003); 49 CFR part 209, app. C.

[4] For further information on the calculation of the specific dollar limit, please see 49 CFR part 1201.

substantial number of small entities. FRA requests comment on both this analysis and this certification, and its estimates of the impacts on small railroads.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the current information collection requirements and the estimated time to fulfill each proposed requirement are summarized as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
234.275—Processor-Based Systems—Deviations from Product Safety Plan (PSP)—Letters.	20 Railroads	25 letters	4 hours	100
236.18—Software Mgmt Control Plan	184 Railroads	184 plans	2,150 hours	395,600
—Updates to Software Mgmt. Control Plan	90 Railroads	20 updates	1.50 hours	30
236.905—Updates to RSPP	78 Railroads	6 plans	135 hours	810
—Response to Request For Additional Info	78 Railroads	1 updated doc	400 hours	400
—Request for FRA Approval of RSPP Modification.	78 Railroads	1 request/modified RSPP.	400 hours	400
236.907—Product Safety Plan (PSP)—Dev	5 Railroads	5 plans	6,400 hours	32,000
236.909—Minimum Performance Standard.				
—Petitions For Review and Approval	5 Railroads	2 petitions/PSP	19,200 hours	38,400
—Supporting Sensitivity Analysis	5 Railroads	5 analyses	160 hours	800
236.913—Notification/Submission to FRA of Joint Product Safety Plan (PSP).	6 Railroads	1 joint plan	25,600 hours	25,600
—Petitions For Approval/Informational Filings	6 Railroads	6 petitions	1,928 hours	11,568
—Responses to FRA Request For Further Info. After Informational Filing.	6 Railroads	2 documents	800 hours	1,600
—Responses to FRA Request For Further Info. After Agency Receipt of Notice of Product Development.	6 Railroads	6 documents	16 hours	96
—Consultations	6 Railroads	6 consults	120 hours	720
—Petitions for Final Approval	6 Railroads	6 petitions	16 hours	96
—Comments to FRA by Interested Parties	Public/RRs	7 comments	240 hours	1,680
—Third Party Assessments of PSP	6 Railroads	1 assessment	104,000 hours	104,000
—Amendments to PSP	6 Railroads	15 amendments	160 hours	2,400
—Field Testing of Product—Info. Filings	6 Railroads	6 documents	3,200 hours	19,200
236.917—Retention of Records			160,000 hrs	
—Results of tests/inspections specified in PSP	6 Railroads	3 documents/records	160,000 hrs.; 40,000 hrs.	360,000
—Report to FRA of Inconsistencies with frequency of safety-relevant hazards in PSP.	6 Railroads	1 report	104 hours	104
236.919—Operations & Maintenance Man.				
—Updates to O & M Manual	6 Railroads	6 updated docs	40 hours	240
—Plans For Proper Maintenance, Repair, Inspection of Safety-Critical Products.	6 Railroads	6 plans	53,335 hours	320,010
—Hardware/Software/Firmware Revisions	6 Railroads	6 revisions	6,440 hours	38,640
236.921—Training Programs: Development	6 Railroads	6 Tr. Programs	400 hours	2,400
—Training of Signalmen & Dispatchers	6 Railroads	300 signalmen; 20 dispatchers.	40 hours 20 hours	12,400
236.923—Task Analysis/Basic Requirements: Necessary Documents.	6 railroads	6 documents	720 hours	4,320
—Records	6 railroads	350 records	10 minutes	58
SUBPART I—NEW REQUIREMENTS				
—236.1001—RR Development of More Stringent Rules Re: PTC Performance Stds.	46 railroads	3 rules	80 hours	240
—236.1005—Requirements for PTC Systems.				
—Temporary Rerouting: Emergency Requests	46 railroads	50 requests	8 hours	400
—Written/Telephonic Notification to FRA Regional Administrator.	46 railroads	50 notifications	2 hours	100
—Temporary Rerouting Requests Due to Track Maintenance.	46 railroads	760 requests	8 hours	6,080
—Temporary Rerouting Requests That Exceed 30 Days.	46 railroads	380 requests	8 hours	3,040
—236.1006—Requirements for Equipping Locomotives Operating in PTC Territory.				
—Reports of Movements in Excess of 20 Miles/RR Progress on PTC Locomotives.	46 railroads	45 reports + 45 reports	8 hours + 170	8,010
—PTC Progress Reports	46 railroads	35 reports	16 hours	560
—236.1007—Additional Requirements for High Speed Service.				
—Required HSR–125 Documents with approved PTCSP.	46 railroads	3 documents	3,200 hours	9,600
—Requests to Use Foreign Service Data	46 railroads	2 requests	8,000 hours	6,000

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—PTC Railroads Conducting Operations at More than 150 MPH with HSR–125 Documents.	46 railroads	3 documents	3,200 hours	9,600
—Requests for PTC Waiver	46 railroads	1 request	1,000 hours	1,000
236.1009–Procedural Requirements.				
—Host Railroads Filing PTCIP or Request for Amendment (RFAs).	46 Railroads	1 PCTIP; 20 RFAs	535 hours; 320 hours	6,935
—Jointly Submitted PTCIPs	46 Railroads	5 PTCIPs	267 hours	1,335
—Notification of Failure to File Joint PTCIP	46 Railroads	1 notification	32 hours	32
—Comprehensive List of Issues Causing Non-Agreement.	46 Railroads	1 list	80 hours	80
—Conferences to Develop Mutually Acceptable PCTIP.	46 Railroads	1 conf. calls	60 minutes	1 hour
—Type Approval	46 Railroads	2 Type Appr.	8 hours	16
—PTC Development Plans Requesting Type Approval.	46 Railroads	20 Ltr. + 20 App; 2 Plans.	8 hrs/1600 hrs.; 6,400 hours.	44,960
—Notice of Product Intent w/PTCIPs (IPs)	46 Railroads	3 NPI; 1 IP	1,070 + 535 hrs	3,745
—PTCDPs with PTCIPs (DPs + IPs)	46 Railroads	1 DP	2,135 hours	2,135
—Updated PTCIPs w/PTCDPs (IPs + DPs)	46 Railroads	1 IP; 1 DP	535 + 2,135 hrs	2,670
—Disapproved/Resubmitted PTCIPs/NPIs	46 Railroads	1 IP + 1 NPI	135 + 270 hrs	405
—Revoked Approvals—Provisional IPs/DP	46 Railroads	IP + 1 DP	135 + 535 hrs	670
—PTC IPs/PTCDPs Still Needing Rework	46 Railroads	1 IP + 1 DP	135 + 535 hrs	670
—PTCIP/PTCDP/PTCSP Plan Contents—Documents Translated into English.	46 Railroads	1 document	8,000 hours	8,000
—Requests for Confidentiality	46 Railroads	46 ltrs; 46 docs	8 hrs.; 800 hrs	37,168
—Field Test Plans/Independent Assessments—Req. by FRA.	46 Railroads	230 field tests; 2 assessments.	800 hours	185,600
—FRA Access: Interviews with PTC Wrkrs	46 Railroads	92 interviews	30 minutes	46
—FRA Requests for Further Information	46 Railroads	8 documents	400 hours	3,200
236.1011—PTCIP Requirements—Comment	7 Interested Groups	1 rev.; 40 com	143 + 8 hrs	463
236.1015—PTCSP Content Requirements & PTC System Certification.				
—Non-Vital Overlay	46 Railroads	3 PTCSPs	16,000 hours	48,000
—Vital Overlay	46 Railroads	28 PTCSPs	22,400 hours	627,200
—Stand Alone	46 Railroads	14 PTCSPs	32,000 hours	448,000
—Mixed Systems—Conference with FRA regarding Case/Analysis.	46 Railroads	3 conferences	32 hours	96
—Mixed Sys. PTCSPs (incl. safety case)	46 Railroads	1 PTCSP	28,800 hours	28,800
—FRA Request for Additional PTCSP Data	46 Railroads	23 documents	3,200 hours	73,600
—PTCSPs Applying to Replace Existing Certified PTC Systems.	46 Railroads	23 PTCSPs	3,200 hours	73,600
—Non-Quantitative Risk Assessments Supplied to FRA.	46 Railroads	23 assessments	3,200 hours	73,600
236.1017—PTCSP Supported by Independent Third Party Assessment.	46 Railroads	1 assessment	8,000 hours	8,000
—Written Requests to FRA to Confirm Entity Independence.	46 Railroads	1 request	8 hours	8
—Provision of Additional Information After FRA Request.	46 Railroads	1 document	160 hours	160
—Independent Third Party Assessment: Waiver Requests.	46 Railroads	1 request	160 hours	160
—RR Request for FRA to Accept Foreign Railroad Regulator Certified Info.	46 Railroads	1 request	32 hours	32
236.1019—Main Line Track Exceptions.				
—Submission of Main Line Track Exclusion Addendums (MTEAs).	46 Railroads	46 MTEAs	160 hours	7,360
—Passenger Terminal Exception—MTEAs	46 Railroads	23 MTEAs	160 hours	3,680
—Limited Operation Exception—Risk Mit	46 Railroads	23 plans	160 hours	3,680
—Ltd. Exception—Collision Hazard Anal	46 Railroads	12 analyses	1,600 hours	19,200
—Temporal Separation Procedures	46 Railroads	11 procedures	160 hours	1,760
236.1021—Discontinuances, Material Modifications, Amendments—Requests to Amend (RFA) PTCIP, PTCDP or PTCSP.	46 Railroads	23 RFAs	160 hours	3,680
—Review and Public Comment on RFA	7 Interested Groups	7 reviews + 20 comments.	3 hours; 16 hours	341
236.1023—PTC Product Vendor Lists	46 Railroads	46 lists	8 hours	368
—RR Procedures Upon Notification of PTC System Safety-Critical Upgrades, Rev., Etc.	46 Railroads	46 procedures	16 hours	736
—RR Notifications of PTC Safety Hazards	46 Railroads	150 notification	16 hours	2,400
—RR Notification Updates	46 Railroads	150 updates	16 hours	2,400
—Manufacturer's Report of Investigation of PTC Defect.	5 System Suppliers	5 reports	400 hours	2,000

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—PTC Supplier Reports of Safety Relevant Failures or Defective Conditions.	5 System Suppliers	150 reports + 150 rpt. copies.	16 hours + 8 hours	3,600
236.1029—Report of On-Board Lead Locomotive PTC Device Failure.	46 Railroads	1,012 reports	96 hours	97,152
236.1031—Previously Approved PTC Systems.				
—Request for Expedited Certification (REC) for PTC System.	46 Railroads	3 REC Letters	160 hours	480
—Requests for Grandfathering on PTCSPs	46 Railroads	3 requests	1,600 hours	4,800
236.1035—Field Testing Requirements	46 railroads	230 field test plans	800 hours	184,000
—Relief Requests from Regulations Necessary to Support Field Testing.	46 Railroads	46 requests	320 hours	14,720
236.1037—Records Retention.				
—Results of Tests in PTCSP and PTCDP	46 railroads	1,012 records	4 hours	4,048
—PTC Service Contractors Training Records	46 Railroads	22,080 records	30 minutes	11,040
—Reports of Safety Relevant Hazards Exceeding Those in PTCSP and PTCDP.	46 Railroads	4 reports	8 hours	32
—Final Report of Resolution of Inconsistency	46 Railroads	4 final reports	160 hours	640
—236.1039—Operations & Maintenance Manual (OMM): Development.	46 railroads	46 manuals	250 hours	11,500
—Positive Identification of Safety-critical components.	46 railroads	120,000 i.d. components.	1 hour	120,000
—Designated RR Officers in OMM. regarding PTC issues.	46 railroads	92 designations	2 hours	184
—236.1041—PTC Training Programs	46 Railroads	46 programs	400 hours	18,400
—236.1043—Task Analysis/Basic Requirements: Training Evaluations.	46 railroads	46 evaluations	720 hours	33,120
—Training Records	46 railroads	560 records	10 minutes	93
—236.1045—Training Specific to Office Control Personnel.	46 railroads	32 trained employees	20 hours	640
—236.1047—Training Specific to Loc. Engineers & Other Operating Personnel.				
—PTC Conductor Training	30 railroads	8,000 trained conductors.	3 hours	24,000

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Nakia Jackson at 202–493–6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after its publication in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, "Federalism." *See* 64 FR 43,255 (Aug. 4, 1999). As discussed earlier in the preamble, this proposed rule would provide regulatory relief from the mandated implementation of PTC systems.

Executive Order 13132 requires FRA to develop a 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" are defined in the Executive Order 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." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a

regulation has federalism implications and preempts state law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has determined that this proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this proposed rule would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule will have preemptive effect. Section 20106 of Title 49 of the United States Code provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the local safety or security exception to § 20106. Furthermore, the Locomotive Boiler Inspection Act (49 U.S.C. 20701–20703) has been held by the U.S. Supreme Court to preempt the entire field of locomotive safety.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

E. Environmental Impact

FRA has evaluated this proposed rule in accordance with its "Procedures for Considering Environmental Impacts" ("FRA's Procedures") (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531) (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditures by state, local or tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation with base year of 1995) or more in any one year. The value equivalent of $100 million in CY 1995, adjusted annual for inflation to CY 2008 levels by the Consumer Price Index for All Urban Consumers (CPI–U) is $141.3 million. The assessment may be included in conjunction with other assessments, as it is in this rulemaking.

FRA is publishing this NPRM to provide additional flexibility in standards for the development, testing, implementation, and use of PTC systems for railroads mandated by RSIA to implement PTC systems. The RIA provides a detailed analysis of the costs and benefits of the NPRM. This analysis is the basis for determining that this rule will not result in total expenditures by State, local or tribal governments, in the aggregate, or by the private sector of $141.3 million or more in any one year. The costs associated with this NPRM are reduced accident reduction from an existing rule. The aforementioned costs borne by all parties will not exceed $3.3 million in any one year.

G. Energy Impact

Executive Order 13211 requires federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211. FRA has determined that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant regulatory action" within the meaning of Executive Order 13211.

H. Privacy Act

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). Interested parties may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov*.

List of Subjects

49 CFR Part 236

Penalties, Positive train control, Railroad safety, Reporting and recordkeeping requirements.

V. The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 236—[AMENDED]

1. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Amend § 236.1003 by adding the definition "PIH Materials" to paragraph (b) to read as follows:

§ 236.1003 Definitions.

* * * * *

(b) * * *

PIH Materials means materials poisonous by inhalation, as defined in §§ 171.8, 173.115, and 173.132 of this title.

* * * * *

3. Amend § 236.1005 by redesignating paragraph (b)(4)(ii) as paragraph (b)(4)(iii); revise paragraph (b)(4)(i) and add a new paragraph (b)(4)(ii) to read as follows:

§ 236.1005 Requirements for Positive Train Control systems.

* * * * *

(b) * * *

(4) * * *

(i) *Routing changes.* In a PTCIP or an RFA, a railroad may request review of the requirement to install PTC on a track segment where a PTC system is otherwise required by this section, but has not yet been installed, based upon changes in rail traffic such as reductions in total traffic volume to a level below 5 million gross tons annually or cessation of passenger service or PIH materials traffic. Any such request shall be accompanied by estimated traffic projections for the next 5 years (*e.g.*, as a result of planned rerouting, coordinations, or location of new business on the line).

(ii) FRA will approve the exclusion requested pursuant to paragraph (b)(4)(i) of this section if the railroad establishes the following:

(A) The cessation of passenger service on the involved track segment prior to January 1, 2016;

(B) A decline in gross tonnage below 5 million gross tons annually as computed over a 2-year period on the involved track segment; or

(C) The cessation or expected cessation of PIH traffic over the involved track segment prior to January 1, 2016.

* * * * *

§ 236.1020 [Removed and reserved]

4. Remove and reserve § 236.1020.

Issued in Washington, DC, on August 17, 2011.

Joseph C. Szabo,

Administrator.

[FR Doc. 2011–21454 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 76, No. 164
Wednesday, August 24, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice. Availability of appealable decisions and decisions subject to the objection process.

SUMMARY: Deciding Officers in the Rocky Mountain Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 219 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. The public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Responsible Officials in the Rocky Mountain Region will also publish notice of proposed actions under 36 CFR 215.5 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. The public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Rocky Mountain Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR 218 or developing, amending or revising land management plans under 36 CFR 219 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 219, notices of proposed actions under 36 CFR part 215, and notices of the opportunity to object under 36 CFR part 218 and 36 CFR part 219 shall begin the first day after the date of this publication.

ADDRESSES: USDA Forest Service, Rocky Mountain Region; *Attn:* Regional Appeals Manager; 740 Simms Street, Golden, Colorado 80401.

FOR FURTHER INFORMATION CONTACT:

Ken Tu, 303 275–5156.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Rocky Mountain Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 219 in the legal notice section of the newspapers listed below. The public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Responsible Officials in the Rocky Mountain Region will also publish notice of proposed actions under 36 CFR 215.5 in the newspapers that are listed in the below. The public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Rocky Mountain Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR 218 or developing, amending or revising land management plans under 36 CFR 219 in the legal notice section of the newspapers listed below.

Rocky Mountain Regional Forester Decisions

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, South Dakota, and eastern Wyoming, and for any decision of Region-wide impact. For those Regional Forester decisions affecting a particular unit, the day after notice will also be published in the newspaper specific to that unit.

Arapaho and Roosevelt National Forests and Pawnee National Grassland, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Canyon Lakes District: *Coloradoan,* published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: *Greeley Tribune,* published daily in Greeley, Weld County, Colorado.

Boulder District: *Daily Camera,* published daily in Boulder, Boulder County, Colorado.

Clear Creek District: *Clear Creek Courant,* published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: *Sky High News,* published weekly in Grand County, Colorado.

Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Grand Valley District: *Grand Junction Daily Sentinel,* published daily in Grand Junction, Mesa County, Colorado.

Paonia District: *Delta County Independent,* published weekly in Delta, Delta County, Colorado.

Gunnison Districts: *Gunnison Country Times,* published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: *Telluride Daily Planet,* published daily in Telluride, San Miguel County, Colorado.

Ouray District: *Montrose Daily Press,* published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: *Pueblo Chieftain,* published daily in Pueblo, Pueblo County, Colorado.

Comanche District: *Plainsman Herald,* published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *La Junta Tribune Democrat,* published daily in La Junta, Otero County, Colorado.

Cimarron District: The Elkhart *Tri-State News,* published weekly in Elkhart, Morton County, Kansas.

South Platte District: *News Press,* published weekly in Castle Rock, Douglas County, Colorado.

Leadville District: *Herald Democrat,* published weekly in Leadville, Lake County, Colorado.

Salida District: *The Mountain Mail,* published daily in Salida, Chaffee County, Colorado.

South Park District: *Fairplay Flume,* published weekly in Bailey, Park County, Colorado.

Pikes Peak District: *The Gazette,* published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Springs Post Independent, published daily in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen-Sopris District: *Aspen Times,* published daily in Aspen, Pitkin County, Colorado.

Blanco District: *Rio Blanco Herald Times,* published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: *Summit Daily,* published daily in Frisco, Summit County, Colorado.

Eagle-Holy Cross District: *Vail Daily,* published daily in Vail, Eagle County, Colorado.

Rifle District: *Citizen Telegram,* published weekly in Rifle, Garfield County, Colorado.

Nebraska National Forest, Nebraska and South Dakota

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District/Charles E. Bessey Tree Nursery: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

Pine Ridge District: *The Chadron Record,* published weekly in Chadron, Dawes County, Nebraska.

Samuel R. McKelvie National Forest: *The Valentine Midland News,* published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

Fort Pierre National Grassland: *The Capital Journal,* published Monday through Friday in Pierre, Hughes County, South Dakota.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

District Ranger Decisions

Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Colorado and Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

Douglas District: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

Brush Creek—Hayden District: *Rawlins Daily Times,* published daily in Rawlins, Carbon County, Wyoming.

Hahns Peak-Bears Ears District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

Yampa District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

Parks District: *Jackson County Star,* published weekly in Walden, Jackson County, Colorado.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: *Powell Tribune,* published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

Wind River District: *The Dubois Frontier,* published weekly in Dubois, Fremont County, Wyoming.

Washakie District: *Lander Journal,* published twice weekly in Lander, Fremont County, Wyoming.

Dated: *August 18, 2011.*

Randall Karstaedt,

Acting Deputy Regional Forester, Resources, Rocky Mountain Region.

[FR Doc. 2011–21611 Filed 8–23–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2011–0020]

Notice of Intent To Request Comments on a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the intention of the Natural Resources Conservation Service (NRCS) to request comments on a currently approved information collection for which approval will expire, 0578–0030, Emergency Watershed Protection (EWP) program.

Public Participation: NRCS invites public participation to promote open communication and better decisionmaking. All persons and organizations that have an interest in the EWP program are urged to provide comments.

Scoping Process: Public participation is requested throughout the scoping process. NRCS is soliciting comments from the public indicating what issues and impacts the public believes should be encompassed within the scope of the EWP program. Comments are invited on: (a) Whether the proposed collection

of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (b) the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used, (c) ways to enhance the quality, utility, and clarity of the information to be collected, and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology.

DATES: *Effective Date:* This is effective August 24, 2011.

Comment Date: Submit comments on or before October 24, 2011.

ADDRESSES: Comments should be submitted, identified by Docket Number NRCS–2011–0020, using any of the following methods:

- *Government-wide rulemaking Web site: http://regulations.gov.* Follow the instructions for sending comments electronically.
- *Mail: Attention:* Phyllis I. Watkins, Agency OMB Clearance Officer, Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013.
- *E-mail: phyllis.watkins@wdc.usda.gov.*

All comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Phyllis I. Watkins, Agency OMB Clearance Officer, Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013; *Phone:* (202) 720–3770; *E-mail: phyllis.watkins@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This notice is prepared in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, and NRCS, in particular, to provide the option of submitting information or transacting business electronically to the maximum extent possible.

Description of Information Collection

Title: Emergency Watershed Protection Program. OMB Number: 0578–0030.

Expiration Date: January 31, 2012.

Type of Request: To request comments on a currently approved collection for which approval will expire.

Abstract: The primary objective of NRCS is to work in partnership with the American people and the farming and ranching community to conserve and sustain our natural resources. The purpose of EWP information collection is to provide assistance to sponsors to undertake emergency measures to retard runoff and prevent soil erosion to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural disaster is causing or has caused a sudden impairment of that watershed. The sponsor's request is submitted formally as a letter (now the Appendix to NRCS–PDM–20A) to the NRCS State Conservationist for consideration. The Damage Survey Report (NRCS–PDM–20) is the agency decisionmaking document that includes the economic, social, and environmental evaluation and the engineer's cost estimate. This information collection allows the responsible Federal official to make EWP program eligibility determinations and provide Federal cost-share contribution to complete the measures. This request is necessary to implement the EWP program for which NRCS has statutory authority. The table below lists the forms in this collection, the uses for each document, and the applicable programs. These forms constitute this information collection and reflect the documents used by EWP sponsors to request participation in the recovery program.

Form No.	Form Title	OMB No.	Program
NRCS–PDM–20	Damage Survey Report	0578–0030	EWP Recovery.
NRCS–PDM–20A	Appendix to the DSR, Request for Participation in the Program	0578–0030	EWP Recovery.

NRCS will ask OMB for 3-year approval within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.5 hours or 117 minutes per response.

Respondents: State government or State agency or a legal subdivision thereof, local unit of government, or any Native American Tribe or Tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450b), with a legal interest in or responsibility for the values threatened by a watershed emergency. All of the foregoing entities must be capable of obtaining necessary land rights and capable of carrying out any operation and maintenance responsibilities that may be required.

Estimated Number of Respondents: 420.

Estimated Total Annual Burden on Respondents: 5,565 hours.

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

Signed August 17, 2011, in Washington, DC.

Homer L. Wilkes,

Acting Associate Chief, Natural Resources Conservation Service.

[FR Doc. 2011–21594 Filed 8–23–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on critical air quality issues relating to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting

is open to the public; a draft agenda is included in this notice.

DATES: The meeting will convene at 8 a.m. on Wednesday and Thursday, September 21–22, 2011, and conclude at 5 p.m. on Wednesday and 4 p.m. on Thursday, respectively. A public comment period will be held. Individuals making oral presentations should contact Elvis L. Graves and bring 26 copies of any material they would like distributed. Written material for AAQTF to be considered prior to the meeting must be received by Elvis Graves (address given below) no later than September 9, 2011.

ADDRESSES: The meeting will be held on the campus of Kansas State University, Alumni Center, located at the corner of 17th and Anderson Avenue, Manhattan, Kansas.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed to Elvis L. Graves, Designated Federal Official. Mr. Graves may be contacted at NRCS, Post Office Box 2890, Washington, DC 20013; *telephone:* (202) 720–1858; *fax:* (202) 720–2646; *e-mail: elvis.graves@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF, including revised agendas for the September 21–22, 2011, meeting that occurs after this **Federal Register** Notice is published, may be viewed at: *http://www.airquality.nrcs.usda.gov/AAQTF/index.html.*

Draft Agenda for the September 21–22, 2011, AAQTF Meeting

A. Welcome to Manhattan, Kansas
- USDA, NRCS, University, and local officials

B. Review minutes and actions from last meeting

C. USDA and Environmental Protection Agency Updates

D. Air Quality Issues/Concerns Discussions
- Continued discussion of goals for AAQTF
- Committee Updates

E. Next Meeting, time/place
- Public Input (Designated times will be reserved to receive public comment. Individual presentations will be limited to 5 minutes).

*Please note that the timing of events in the agenda is subject to change to accommodate changing schedules of expected speakers.

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may make oral presentations during the meeting. Those persons wishing to make oral presentations should notify Elvis L. Graves no later than September 9, 2011. Those wishing to distribute written materials at the meeting (in conjunction with spoken comments) must bring 26 copies of the materials. Written materials for distribution to AAQTF members prior to the meeting must be received by Mr. Graves no later than September 9, 2011.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact Elvis L. Graves. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact USDA's Target Center at (202) 720–2000 (voice and TDD).

Signed in Washington, DC, on August 15, 2011.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2011–21589 Filed 8–23–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Gulf of Mexico Red Snapper IFQ Program.

OMB Control Number: 0648–0551.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 487.

Average Hours Per Response: Transfer of shares, 2 minutes; dealer landing transaction report, notification of landing, transfer of allocation, 5 minutes; landing correction form, 3 minutes; online account application, 10 minutes.

Burden Hours: 982.

Needs and Uses: National Marine Fisheries Service (NMFS) Southeast Region manages the U.S. fisheries of the exclusive economic zone (EEZ) off the South Atlantic, Caribbean, and Gulf of Mexico under the Fishery Management Plans (FMP) for each Region. The Regional Fishery Management Councils prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. NMFS manages the red snapper fishery in the waters of the Gulf of Mexico under the Reef Fish FMP. The Individual Fishing Quota (IFQ) program was implemented to reduce the overcapacity in the fishery and end the derby fishing conditions that resulted from that overcapitalization.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requests information from fishery participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the fisheries of the EEZ of Gulf of Mexico.

Dealer, shareholder and fishermen annual reporting requirements have been removed, as the information can be obtained through other current reporting requirements. Also, the burden for online account activation has been removed, as all eligible shareholders have activated their accounts; however, there is a new burden for account renewal. A one-time percentage of share ownership has been removed, as it is now covered under another OMB Control No. as part of a permit application.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 18, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21558 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cooperative Charting Programs.

OMB Control Number: 0648–0022.

Form Number(s): NOAA 77–5.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 600.

Average Hours per Response: United States (U.S.) Power Squadron corrections, 2 hours; U.S. Coast Guard Auxiliary corrections, 3 hours.

Burden Hours: 2,540.

Needs and Uses: This request is for an extension of a current information collection.

The U.S. Coast Guard Auxiliary members report observations of changes that require additions, corrections or revisions to Nautical Charts, on the NOAA Form 77–05. The U.S. Power Squadrons use a Web site to report the same information. The information provided is used by NOAA National Ocean Service to maintain and prepare new additions that are used nationwide by commercial and recreational navigators.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 19, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–21608 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 110705370–1511–02]

Request for Comments: Public Input for the Launch of the Strong Cities, Strong Communities Visioning Challenge

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and request for comments; extending public comment deadline.

SUMMARY: On July 11, 2011, the Economic Development Administration (EDA) published a **Federal Register** notice requesting public input on the structure of the Strong Cities, Strong Communities Visioning Challenge (SC2 Pilot Challenge) (76 FR 40686). Due to significant interest in the agency's formulation of the anticipated Federal funding opportunity (FFO) announcement for the SC2 Pilot Challenge, EDA publishes this notice to extend the time frame for submission of public comments.

DATES: Comments must be received no later than 5 p.m. Eastern Time on September 7, 2011. Interested parties should submit comments in writing by e-mail or facsimile, as provided below under **ADDRESSES**.

ADDRESSES: Comments will continue to be submitted by any of the following methods:

- *E-mail: lboswell@eda.doc.gov.* Please state "Comment on SC2 Pilot Challenge" in the subject line of the e-mail.
- *Facsimile:* (202) 482–2838. Please state "Comment on SC2 Pilot Challenge" on the cover page.

To receive consideration, comments must be submitted through e-mail or facsimile. All submissions must reference "Comment on the SC2 Pilot Challenge." As noted in the initial **Federal Register** notice (76 FR 40686), if you are addressing one of the questions listed under "Solicitation for Comments on the SC2 Pilot Challenge" in the July 11, 2011 notice, please note the number of the question to which you are responding. Do not include any information in your comment that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Lynette Boswell, Performance and National Programs Division, Economic Development Administration, Department of Commerce, Room 7009, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: President Obama recognized the importance of economically vibrant and prosperous cities, towns and regions to our national economy when he asserted that "strong cities are the building blocks of strong regions, and strong regions are essential for a strong America." To create Federal-local synergies that will help strengthen economically distressed communities, the Administration has developed the SC2 Pilot Challenge. In the **Federal Register** notice published on July 11, 2011 (76 FR 40686), EDA requested public feedback on the structure of the SC2 Pilot Challenge to assist with the formulation of the FFO announcement for the Challenge. Due to significant interest in this initiative and to ensure stakeholders have ample time to comment, EDA is extending the deadline for the submission of comments from August 9, 2011, to September 7, 2011. Please see the July 11, 2011 notice and request for comments, and EDA's Web site at *http://www.eda.gov* for more information. Although EDA welcomes public comments on the structure of the SC2 Pilot Challenge, the agency specifically requests input on the effective use of authority to conduct prize competitions under the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Reauthorization Act of 2010 (Pub. L. 111–358 (2011)) as a tool to implement the SC2 Pilot Challenge.

Comments should be submitted to EDA as described in the **ADDRESSES** section of this notice. EDA will consider all comments submitted in response to this notice that are received by 5 p.m. Eastern Time on September 7, 2011, as referenced under **DATES**. All public comments (including faxed or e-mailed comments) submitted in response to this notice must be in writing and will be a matter of public record. All comments submitted will be available for public inspection and copying.

Dated: August 18, 2011.

John Fernandez,

Assistant Secretary for Economic Development, U.S. Department of Commerce.

[FR Doc. 2011–21618 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council, Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on September 19 and 20, 2011, 10 a.m., at the Sofitel Hotel Miami, 5800 Blue Lagoon Drive, Miami, Florida 33126. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Monday, September 19

Open Session

1. Export Control Reform Field Hearing.

Tuesday, September 20

Open Session

1. Welcome and Remarks by the Chairman and Vice Chair.
2. Export Control Reform Update.
3. Presentation of Papers or Comments by the Public.
4. Review of Field Hearing.
5. Status of 2011 Workplan.
6. Discussion of 2012 Workplan.
7. Subcommittee Breakout Sessions.

A limited number of seats will be available for the public sessions on both days. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Yvette Springer on 202–482–2813.

Dated: August 16, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–21649 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–933]

Frontseating Service Valves From the People's Republic of China: Extension of Time for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243.

Background

On May 9, 2011, the Department of Commerce ("the Department") published the preliminary results of this administrative review for the period October 22, 2008, to March 31, 2010. *See Frontseating Service Valves from the People's Republic of China: Preliminary Results of the 2008–2010 Antidumping Duty Administrative Review and Partial Rescission of Review,* 76 FR 26686 (May 9, 2011). The final results of review are currently due on September 6, 2011.

Extension of Time Limits for the Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue final results 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. Completion of the final results of the administrative review within the 120-day period is not practicable because the Department requires additional time to analyze data submitted after the preliminary results, to allow time for parties to submit rebuttal information regarding changes to the Department's wage rate methodology, and to consider the arguments raised by the parties in the case and rebuttal briefs and provided at the hearing.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final results of the administrative review to 180 days, until November 5, 2011, in accordance with section 751(a)(3)(A) of the Act. However, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *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). Accordingly, the final results of review will be due no later than November 7, 2011.

We are publishing this notice pursuant to sections 751(a) and 777(i) of the Act.

Dated: August 16, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–21673 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Mary Kolberg, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6478 and (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2011, the U.S. Department of Commerce ("Department") published a notice of opportunity to request an administrative review of the antidumping order on polyester staple fiber from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 24460–01 (May 2, 2011). On May 31, 2011, in accordance with 19 CFR 351.213(b), the Department received a timely request from DAK Americas LLC, and Auriga Polymers, Inc., successor to Invista, S.a.r.L. (collectively, "Petitioners") to conduct an administrative review of Huvis Corporation ("Huvis") and Woongjin Chemical Co., Ltd. ("Woongjin") for the period of review May 1, 2010, through

April 30, 2011. On May 27, and May 31, 2011, the Department also received timely administrative review requests from Huvis and Woongjin, respectively. On June 10, 2011, we informed Petitioners, Huvis, and Woongjin that their submissions did not conform to the Department's revised 19 CFR 351.303(g) certification language as announced in *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011). Petitioners, Huvis, and Woongjin submitted the correct certification language in a timely manner.

On June 28, 2011, in accordance with 19 CFR 351.221(c)(1)(i), the Department published the notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011).

Scope of the Order

Polyester staple fiber covered by the scope of the order is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon, or other finish, or not coated. Polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.00.25 is specifically excluded from the order. Also, specifically excluded from the order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt polyester staple fiber is excluded from the order. Low-melt polyester staple fiber is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the merchandise covered by the scope of the order is dispositive.

Rescission of Antidumping Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested administrative review. On June 28, and July 11, 2011, Petitioners withdrew their request for an administrative review of Huvis and Woongjin, respectively. On July 7, and July 11, 2011, Woongjin and Huvis, respectively, withdrew their requests for an administrative review.

As Petitioners, Huvis, and Woongjin withdrew their requests for an administrative review within the 90-day period, the Department is rescinding this administrative review.

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties at the cash deposit rate in effect at the time of entry or withdrawal from warehouse for consumption in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act, as amended, and 19 CFR 351.213(d)(4).

Dated: August 18, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–21664 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Withdrawal of Application for Duty-Free Entry of Scientific Instruments

Applications may be examined between 8:30 a.m. and 5 p.m. in Room 3720, Statutory Import Programs Staff, U.S. Department of Commerce 14th and Constitution Ave., NW., Room 2104 Washington, DC 20230.

Docket Number: 11–041. *Applicant:* Washington University, 660 South Euclid Avenue, Saint Louis, MO 63110–1093. *Instrument:* Transmission electron microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 76 FR 43263, July 20, 2011.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), the Department of Commerce and the Department of Homeland Security determine, *inter alia,* whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States as well as whether the instrument or apparatus is for the exclusive use of the applicant institution and is not intended to be used for commercial purposes.

On August 16, 2011, Washington University officials notified the Department that they wished to withdraw the above-referenced application for duty-free entry of a scientific instrument. They noted that the instrument will be cleared through Customs with duty paid by the vendor in order to meet a scheduling requirement. As noted in the regulations at section 301.5(g), the Department of Commerce shall discontinue processing an application when a request has been made by the applicant to withdraw the application. Therefore, the Department of Commerce has discontinued the processing of this application, in accordance with section 301.5(g) of the regulations. *See 15 CFR 301.5(g).*

Dated: August 18, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–21671 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801]

Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Administrative and Changed Circumstances Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 21, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, and Italy. The period of review is May 1, 2009, through April 30, 2010.

Based on our analysis of the comments received, we have made changes, including corrections of certain programming and other errors in the margin calculations. Therefore, the final results are different from the preliminary results for certain respondents. The final weighted-average dumping margins for the reviewed respondents are listed below in the section entitled "Final Results of the Reviews." We have also determined that Schaeffler Technologies GmbH & Co. KG (Schaeffler Technologies) is the successor-in-interest to Schaeffler KG with respect to the order on ball bearings and parts thereof from Germany.

DATES: Effective Date: August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 2011, the Department published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, and Italy. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Administrative and Changed-Circumstances Reviews,* 76 FR 22372 (April 21, 2011) (*Preliminary Results*).[1]

We invited interested parties to comment on the *Preliminary Results.* We received case and rebuttal briefs from various parties to the proceedings. No hearing was requested for the administrative reviews.

The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Orders

The products covered by the orders are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written descriptions of the scope of the orders remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. The orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the orders. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the orders.

For a list of scope determinations which pertain to the orders, see the "Memorandum to Laurie Parkhill" regarding scope determinations for the 2009/2010 reviews, dated April 14, 2011, which is on file in the Central Records Unit (CRU) of the main Commerce building, Room 7046, in the General Issues record (A–100–001).

Analysis of the Comments Received

All issues raised in the case briefs by parties to these administrative reviews of the antidumping duty orders on ball bearings and parts thereof are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Kim Glas, Deputy Assistant Secretary for Textiles and Apparel, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memorandum and attached to this notice as an Appendix. The Decision Memorandum, which is a public document, is on file in the CRU of the main Commerce building, room 7046, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Changed Circumstances Review

In the *Preliminary Results,* we preliminarily determined that Schaeffler Technologies is the successor-in-interest to Schaeffler KG and invited interested parties to comment. We received no

[1] The Department has revoked the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom and discontinued all administrative reviews of those orders. See *Ball Bearings and Parts Thereof From Japan and the United Kingdom: Revocation of Antidumping Duty Orders,* 76 FR 41761 (July 15, 2011).

comments from interested parties. For the reasons we stated in the *Preliminary Results* and because we received no comments to the contrary from interested parties, we continue to determine that Schaeffler Technologies is the successor-in-interest to Schaeffler KG. Consequently, we will instruct U.S. Customs and Border Protection (CBP) to apply the cash-deposit rate in effect for Schaeffler KG to all entries of the subject merchandise from Schaeffler Technologies that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of the changed-circumstances review.

Rates for Non-Selected Companies

Based on our analysis of the responses and our available resources, we selected certain companies for individual examination of their sales of the subject merchandise to the United States during the period of review as permitted under section 777A(c)(2) of the Act. For a detailed discussion on the selection of the respondents for individual examination, see *Preliminary Results*, 76 FR at 22373. For the final results, we have not changed the basis of the rate we applied to respondents not selected for individual examination.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made revisions that have changed the results for certain companies. We have corrected programming and other errors in the margins we included in the *Preliminary Results*, where applicable. A detailed discussion of each correction we made is in the company-specific analysis memoranda dated concurrently with this notice, which are on file in the CRU of the main Commerce building.

Sales Below Cost in the Home Market

Pursuant to section 773(b)(1) of the Act, the Department disregarded sales in the home market that failed the cost-of-production test for the following firms for these final results of reviews: France—SKF France S.A./SKF Aerospace France S.A.S. and SNR Roulements S.A./SNR Europe; Germany—Myonic GmbH and The Schaeffler Group/Schaeffler KG/Schaeffler Technologies GmbH; Italy—Schaeffler Italia S.r.l./WPB Water Pump Bearing GmbH & Co. KG/The Schaeffler Group and SKF Industries S.p.A./Somecat S.p.A./SKF RIV–SKF Officine di Villar Perosa S.p.A.

Final Results of the Reviews

We determine that the following percentage weighted-average dumping margins on ball bearings and parts thereof exist for the period May 1, 2009, through April 30, 2010:

Exporter/manufacturer	Dumping margin (percent)
France:	
Alcatel Vacuum Technology	5.47
Audi AG	5.47
AVIAC	66.42
Avio	5.47
Bosch Rexroth SAS	5.47
Caterpillar Group Services S.A.	5.47
Caterpillar Materials Routiers S.A.S.	5.47
Caterpillar S.A.R.L.	5.47
Dassault Aviation	5.47
Eurocopter SAS	66.42
Groupe Intertechnique	5.47
Kongskilde Limited	5.47
Perkins Engines Company Limited	5.47
SKF France S.A. and SKF Aerospace France S.A.S.	5.21
SNECMA	66.42
SNR Roulements S.A. and SNR Europe	7.67
Technofan	66.42
Volkswagon AG	5.47
Volkswagen Zubehor GmbH	5.47
Germany:	
Audi AG	6.25
BAUER Maschinen GmbH	6.25
Bosch Rexroth AG	6.25
BSH Bosch and Siemens Hausgerate GmbH	6.25
Caterpillar S.A.R.L.	6.25
Heidelberger Druckmaschinen AG	6.25
Kongskilde Limited	6.25
Myonic GmbH	11.42
Robert Bosch GmbH	6.25
Robert Bosch GmbH Power Tools and Hagglunds Drives	6.25
The Schaeffler Group, Schaeffler KG, and Schaeffler Technologies GmbH	3.66
SKF GmbH	6.25
Volkswagon AG	6.25
Volkswagen Zubehor GmbH	6.25
W & H Dentalwerk Burmoos GmbH	6.25
Italy:	
Audi AG	10.27
Bosch Rexroth S.p.A	10.27
Caterpillar Overseas S.A.R.L.	10.27
Caterpillar of Australia Pty. Ltd.	10.27
Caterpillar Group Services S.A.	10.27
Caterpillar Mexico, S.A. de C.V.	10.27
Caterpillar Americas C.V.	10.27
Eurocopter	69.99

Exporter/manufacturer	Dumping margin (percent)
Hagglunds Drives S.r.l.	10.27
Kongskilde Limited	10.27
Perkin Engines Company Limited	10.27
Schaeffler Italia S.r.l., WPB Water Pump Bearing GmbH & Co. KG, and The Schaeffler Group	2.87
SKF Industries S.p.A., Somecat S.p.A., and SKF RIV–SKF Officine di Villar Perosa S.p.A.	11.97
SNECMA	69.99
Volkswagen AG	10.27
Volkswagen Zubehor GmbH	10.27

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to these reviews as described below.

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by companies selected for individual examination in the reviews for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the country-specific all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

For the companies which were not selected for individual examination and for the companies to which we are applying adverse facts available, we will instruct CBP to apply the rates listed above to all entries of subject merchandise produced and/or exported by such firms.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of these reviews.

Export Price Sales

With respect to export price (EP) sales, for these final results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

Constructed Export Price Sales

For constructed export price (CEP) sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. See 19 CFR 351.212(b).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each company, *i.e.*, each exporter and/or manufacturer included in these reviews, we divided the total dumping margins for each company by the total net value of that company's sales of subject merchandise during the period of review subject to each order.

To derive a single cash-deposit rate for each company, we weight-averaged the EP and CEP deposit rates (using the total extended EP and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales (see *Preliminary Results*, 75 FR at 22375), we first calculated the total dumping margins for all CEP sales during the period of review by multiplying the sample CEP margins by the ratio of total days in the period of review to days in the sample weeks. We then calculated a total net value for all CEP sales during the period of review by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both EP and CEP sales by the combined total value of both EP and CEP sales to obtain the cash-deposit rate.

We will direct CBP to collect the resulting cash-deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's cash-deposit rate applicable to the order.

Furthermore, the following cash-deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a company covered in these reviews, a prior review, or the less-than-fair-value investigations but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the all-others rate for the relevant order made effective by the final results of reviews published on July 26, 1993. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993). For ball bearings and parts thereof from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final, Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472, 66521 (December 17, 1996). These cash-deposit rates are the all-others rates from the relevant less-than-fair-value investigations. These cash-deposit requirements shall remain in effect until further notice.

Notifications

This notice also serves as a final 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

Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative reviews and final results of changed-circumstances review are issued and published in accordance with sections 751(a)(1), 751(b)(1), and 777(i)(1) of the Act.

Dated: August 18, 2011.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

Appendix

1. Zeroing of Negative Margins
2. 15–Day Issuance of Liquidation Instructions
3. Application of Adverse Facts Available
4. Selling, General, and Administrative Expenses
5. Treatment of Duty Drawback
6. Calculation of Financial Expenses
7. Capping Interest Revenue
8. Sample Sales
9. Exclusion of Certain Resales
10. Clerical Errors

[FR Doc. 2011–21669 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA595

Draft 2011 Marine Mammal Stock Assessment Reports

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

ACTION: Notice; request for comments.

SUMMARY: NMFS reviewed the Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act. SARs for marine mammals in the Alaska, Atlantic, and Pacific regions were revised according to new information. NMFS solicits public comments on draft 2011 SARs.

DATES: Comments must be received by November 22, 2011.

ADDRESSES: The 2011 draft SARs, summaries of them, and references cited in this notice are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/sars/draft.htm.*

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070.

Copies of the Atlantic, Gulf of Mexico, and Caribbean Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

You may submit comments, identified by [NOAA–NMFS–2011–0200], by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov;* Robyn Angliss 206–526–4032, *Robyn.Angliss@noaa.gov,* regarding Alaska regional stock assessments; Gordon Waring, 508–495–2311, *Gordon.Waring@noaa.gov,* regarding Atlantic, Gulf of Mexico, and Caribbean regional stock assessments; or Jim Carretta, 858–546–7171, *Jim.Carretta@noaa.gov,* regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. The term "strategic stock" means a marine mammal stock: (A) For which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the Endangered Species Act. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific independent Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in the Alaska, Atlantic, and Pacific regions to incorporate new information. NMFS solicits public comments on the draft 2011 SARs.

Alaska Reports

In the Alaska region (waters off Alaska that are under the jurisdiction of the United States), SARs for 35 Alaska stocks (14 "strategic", 21 "non-strategic" including 12 new harbor seal stocks) were updated or added. The following stocks were reviewed and considered for updating for 2011: Steller sea lion (western and eastern stocks), Northern fur seal, harbor seals (12 stocks), spotted seal, bearded seal, ringed seal, ribbon seal, beluga whale (Beaufort Sea, eastern Chukchi Sea, eastern Bering Sea, Bristol Bay, and Cook Inlet stocks), AT1 transient killer whale, harbor porpoise (Gulf of Alaska, Bering Sea, Southeast Alaska stocks), sperm whale, gray whale, humpback

whale (western North Pacific and central North Pacific stocks), fin whale, North Pacific right whale, and bowhead whale. Most revisions included updates of abundance and/or mortality estimates. None of the updates resulted in change of status of a stock.

In light of the availability of new fishery observer data, serious injury and mortality data from the Alaska groundfish fisheries observer programs were updated for all stocks for the 2007-2009 period regardless of whether they were scheduled for review in 2011. Serious injury and mortality estimates were changed for the following stocks: Killer whale (Alaska resident and Gulf of Alaska, Bering Sea, and Aleutian Islands Transient stocks) and Dall's porpoise.

In 2010, NMFS and the Alaska Native Harbor Seal Commission held their annual co-management meeting during which they agreed to proceed with a revised set of population boundaries for harbor seals in Alaska, resulting in a population structure of twelve harbor seal stocks in Alaska. NMFS is currently in the process of drafting individual SARs for the 12 stocks. Preliminary abundance estimates and PBR levels have been calculated for each harbor seal stock, and those estimates are included in the draft 2011 SARs. Serious injury and mortality records for harbor seals are reported; however, most of these records have not been assigned to a particular stock. At the recommendation of the Alaska SRG, data for all 12 harbor seals stocks in Alaska are presented in a single harbor seal SAR for 2011. NMFS expects to develop separate SARs for all 12 stocks in the 2012 SARs.

Typically, the most recent five years of data are used for estimating average annual serious injury and mortality of stocks. In 2007, the NMFS Alaska Fisheries Science Center (AFSC) developed a new database for the fisheries observer data and updated analytical methods for estimating bycatch. As a result of these changes, AFSC determined that Alaska fisheries observer data from 2007 onward could not be combined with data from analyses of data prior to 2006. Therefore, after consulting the SRG, the AFSC decided to base fishery observer serious injury and mortality estimates on an analysis of the most recent three-year period from 2007–2009.

NMFS decided to shift the eastern North Pacific gray whale SAR from the Alaska SARs to the Pacific SARs beginning in 2012. The NMFS Southwest Fisheries Science Center has the responsibility for conducting abundance estimates and management for the gray whale stock; and, therefore, the agency felt it was most appropriate for that Center to prepare the SAR. Both the Alaska SRG and Pacific SRG will review the 2012 gray whale SAR, and staff who compile the Pacific SARs will work closely with AFSC and Northwest Regional Office staff during the first year after this transition is made.

Ice-dependent seal ("ice seals") SARs were updated in 2011 based on the availability of significant new information resulting from the status reviews conducted for these stocks.

Atlantic Reports

In the Atlantic region, SARs were revised for 14 Atlantic stocks and four Gulf of Mexico stocks. The updated western Atlantic (U.S. Atlantic coast, Gulf of Mexico, and U.S. Territories in the Caribbean) stocks include all the large whale stocks except sperm whales and blue whales, and those small cetacean and seal species that had fishery interactions. Of these, seven are "strategic" stocks: North Atlantic right whale, humpback whale, fin whale, sei whale, long-finned pilot whale, Atlantic white-sided dolphin (which became strategic because the 2002 abundance estimate is outdated), and harbor porpoise. The updated Gulf of Mexico stocks include Bryde's whale (which has now become "strategic" because the average annual human-caused mortality and serious injury exceeds PBR), pantropical spotted dolphin (not "strategic"), bottlenose dolphin-bay, sound and estuarine (all stocks "strategic") and bottlenose dolphin-oceanic (not "strategic").

Eight new Atlantic region SARs have been added in 2011. These include reports for five Caribbean species (bottlenose dolphin, Atlantic spotted dolphin, spinner dolphin, short-finned pilot whale, and Cuvier's beaked whale) and three Gulf of Mexico estuarine stocks of bottlenose dolphin that had previously been included in the bottlenose dolphin—bay, sound and estuarine stocks report (Barataria Bay, St. Joseph Bay and Choctawhatchee Bay). Because most of the bottlenose dolphin stock sizes are currently unknown but likely small, and relatively few mortalities and serious injuries would exceed PBR, NMFS considers each of these stocks a "strategic" stock. All Caribbean region stocks are being considered as strategic stocks due to lack of knowledge of stock size or anthropogenic mortality.

Pacific Reports

In the Pacific region (waters along the west coast of the United States, within waters surrounding the main and Northwest Hawaiian Islands, and within waters surrounding U.S. Territories in the Western Pacific), SARs were revised for nine stocks, including four "strategic" stocks (Hawaiian monk seal, Southern Resident killer whale, Hawaii Insular false killer whale, and Hawaii Pelagic false killer whale), and five "non-strategic" stocks (California sea lion, California harbor seal, Northern Oregon/Washington coast harbor porpoise, Washington Inland waters harbor porpoise, and Palmyra Atoll false killer whale). The remaining 66 Pacific region stocks under NMFS jurisdiction were not revised, and information on those stocks can be found in the final 2010 reports (Carretta *et al.* 2011). General updates are as follows.

Abundance estimates were updated for four stocks: California sea lion, California harbor seal, Hawaiian monk seal, and Southern Resident killer whale. The abundance estimate updates did not change the status of these stocks. The new abundance estimate for California sea lions increased the PBR from 8,511 to 9,200. The new abundance estimate for California harbor seals decreased the PBR from 1,896 to 1,600. PBRs for Hawaiian monk seals and Southern Resident killer whales are unchanged.

Updated information on human-caused mortality is presented for California Sea lions, California harbor seals, two harbor porpoise stocks, and three false killer whale stocks.

NMFS received a petition in October 2009 to list the Hawaii insular false killer whale as endangered under the Endangered Species Act. A Take Reduction Team was established in 2010 with the goal of reducing mortality and serious injury incidental to commercial fishing in the Hawaii pelagic, Hawaii insular, and Palmyra stocks of false killer whale (75 FR 2853, 19 January 2010). Details on the Take Reduction Plan and its proposed implementation were published in 2011 (76 FR 42082, 18 July 2011). New information on a population viability analysis for the stock of Hawaii Insular false killer whale is presented in the draft 2011 SAR.

Dated: August 18, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–21654 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA656

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Salmon Fishery Management Plan (FMP) Workgroup will meet in Anchorage, AK.

DATES: The meeting will be held on September 14, 2011, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Clarion Suites, 1110 West 8th Avenue, Anchorage AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; *telephone:* (907) 271–2809.

SUPPLEMENTARY INFORMATION: Review of possible revisions to the Salmon Fishery Management Plan (FMP), and discussion/review of initial analysis.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: August 18, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–21580 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA657

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, September 26–October 4, 2011 in Dutch Harbor, Alaska.

DATES: The Council will begin its plenary session at 8 a.m. on Wednesday, September 28, 2011 continuing through Tuesday, October 4, 2011. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, September 26, 2011 and continue through Friday, September 30, 2011. The Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday, September 26, 2011 and continue through Wednesday, September 28, 2011. All meetings are open to the public, except executive sessions.

ADDRESSES: The Council will meet at Grand Aleutian Hotel, Makushin Room, the SSC will meet at Grand Aleutian Hotel, Shashaldin Room, the Advisory Panel will meet at the Unisea Central Building (there will be a shuttle between the two meeting locations).

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Council Plenary Session

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

Reports

1. Executive Director's Report

NMFS Management Report (including Gulf of Alaska Pacific cod sector split report).

Alaska Department of Fish & Game Report (including Board of Fisheries cod proposals).

NOAA Enforcement Report.

United States Coast Guard Report.

United States Fish & Wildlife Service Report.

Protected Species Report (including Committee of Independent Experts terms of reference).

2. *Salmon Fishery Management Plan (FMP):* Report on the Salmon Workshop; Initial Review of a revised Salmon FMP.

3. *Groundfish Harvest Specifications:* Adopt proposed specifications for 2012; Initial review of analysis to reduce Gulf of Alaska (GOA) halibut Prohibited Species Catch (PSC) limits; Review white paper on Individual Bycatch Quotas (IBQs).

4. *Bering Sea Aleutian Island (BSAI) Crab Issues:* Initial review of Crab Electronic Data Reporting (EDR); Report from stakeholders on crab 5 year review issues (Delayed until December); Approve catch specifications/approve BSAI Crab Stock Assessment Fishery Evaluation (SAFE) report; Final action on Pribilof Blue King Crab Rebuilding plan; Review alternatives for Tanner Crab Rebuilding.

5. *Observer Program:* Review Observer Advisory Committee report; Review Restructuring Regulations.

6. *Halibut Management:* Initial Review/Final action on Community Quota Entity (CQE) vessel use caps; Initial Review of CQE in Area 4B; Discussion/direction on Area 4B Fish-up.

7. *Groundfish Issues:* Discussion paper on vessel replacement Bering Sea Freezer Longliners (Delayed till December); Draft regulations for freezer longliner Catch Monitoring and Enforcement; Discussion paper on GOA Pacific Cod A-season opening dates (Delayed till December); Discussion paper on GOA pollock D-season; Discussion paper on Bering Sea & Aleutian Island Pacific Cod split; Review/approve Halibut mortality on trawlers EFP (T).

8. *Staff Tasking:* Review Committees and tasking.

9. Other Business

The SSC agenda will include the following issues:

1. Salmon FMP.
2. Groundfish Specifications.
3. BSAI Crab Issues.
4. Halibut Mortality on trawlers EFP.

The Advisory Panel will address most of the same agenda issues as the Council, except #1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/.*

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: August 18, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–21582 Filed 8–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of Open Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (*i.e.*, interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Monday, September 5, 2011 by contacting Ms. Tracy Jones at (202) 219–2099 or via e-mail at *tracy.deanna.jones@ed.gov*. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

Dates and Time: Tuesday, September 13, 2011, beginning at 11 a.m. and ending at approximately 12:30 p.m. (E.DT.). This conference call is a rescheduled call from August 10, 2011.

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412,Washington, DC 20202–7582.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington DC 20202–7582, (202) 219–2099.

Individuals who use a telecommunications device for the deaf (TTY) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTAL INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Opportunity Act of 2008 to include several important areas: access, Title IV modernization, early information and needs assessment and review and analysis of regulations. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference for annual election of officers and to approve its Fiscal Year 2012 work plan.

Space for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following *e-mail address: tracy.deanna.jones@ed.gov*. Please include your name, title, affiliation, complete address (including internet and email, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Friday, September 9, 2011.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *http://www.ed.gov/ACSFA*.

Dated: August 19, 2011.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2011–21609 Filed 8–23–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will allow DOE to comply with a reporting requirement placed on all Federal agencies administering programs subject to Davis-Bacon wage provisions. 29 CFR part 5, Section 5.7(b) requires all Federal agencies administering programs subject to Davis-Bacon wage provisions to submit to the Department of Labor (DOL) a semi-annual compliance and enforcement report. In order for the Department of Energy (DOE) to comply with this reporting requirement, it must collect information from Recipients of Recovery Act funded grants, including state and local agencies; Recovery Act funded Loan and Loan Guarantee Borrowers, DOE direct contractors, and other prime contractors and subcontractors that administer DOE programs subject to Davis-Bacon requirements. DOE Recipients will be asked each six months to report to DOE the same items that DOE must ultimately report to DOL, including information on the number Davis-Bacon Act compliance and enforcement investigations conducted and violations found.

DATES: Comments regarding this collection must be received on or before September 23, 2011. 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, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC

20503. And to Eva Auman, GC–63; Department of Energy; 1000 Independence Ave, SW.; Washington, DC 20585; *Fax:* 202–586–0325; *E-mail: eva.auman@hq.doe.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Eva Auman, GC–63; Department of Energy; 1000 Independence Ave, SW.; Washington, DC 20585; *Fax:* 202–586–0325; *E-mail: eva.auman@hq.doe.gov*. The draft collection instrument is available for review at the following Web site: *http://www1.eere.energy.gov/wip/davis-bacon_act.html#ICR_draft collectioninstrument.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB Control Number 1910–New; (2) *Information Collection Request Title:* Davis-Bacon Semi-annual Labor Compliance Report; (3) *Type of Request:* Regular; (4) *Purpose:* All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by 29 CFR part 5, Section 5.7(b) to submit to the Department of Labor (DOL) a semi-annual compliance and enforcement report. In order for DOE to comply with this reporting requirement, it must collect information from Recipients of Recovery Act funded grants, including state and local agencies; Recovery Act funded Loan and Loan Guarantee Borrowers, DOE direct contractors, and other prime contractors and subcontractors that administer DOE programs subject to Davis-Bacon requirements. DOE will require that such entities complete and submit a Semi-annual Labor Standard Enforcement Report each six months; (5) *Annual Estimated Number of Respondents:* 2,400; (6) *Annual Estimated Number of Total Responses:* 4,800; (7) *Annual Estimated Number of Burden Hours:* 9,600; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority

All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by 29 CFR part 5, section 5.7(b) to submit to the Department of Labor (DOL) a semi-annual compliance and enforcement report. In order for DOE to comply with this reporting requirement, it must collect information from Recipients of Recovery Act funded grants, including state and local agencies; Recovery Act funded Loan and Loan Guarantee Borrowers, DOE direct contractors, and other prime contractors and subcontractors that administer DOE programs subject to Davis-Bacon requirements.

Issued in Washington, DC on *August 18, 2011.*

Annamaria Garcia,

Supervisor, State Energy Program, Office of Weatherization and Intergovernmental Program, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–21634 Filed 8–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Site-Wide Environmental Impact Statement (EIS) Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Wednesday, September 7, 2011; 2 p.m.

ADDRESSES: Nevada Site Office, 232 Energy Way, North Las Vegas, Nevada 89030.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. *Phone:* (702) 657–9088; Fax (702) 295–5300 or *E-mail: nssab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Committee: The purpose of the Committee is to review and prepare comments on the draft Site-Wide EIS.

Tentative Agenda: The Committee members will review and prepare comments on the draft Site-Wide EIS.

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC on August 18, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–21638 Filed 8–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 14, 2011, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 241–1984 or *e-mail: halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be an overview of URS/CH2M Oak Ridge LLC (UCOR), the new prime cleanup contractor for the DOE–Oak Ridge Office, and their project plans.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on August 17, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–21637 Filed 8–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–230–4]

Notice of Supplemental Filing; International Transmission Company, d/b/a ITC Transmission.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Supplemental Filing.

SUMMARY: International Transmission Company, d/b/a ITC*Transmission* (ITC), filed supplemental documents in an ongoing Presidential permit proceeding regarding the ITC application to amend Presidential Permit No. PP–230–3.

DATES: Comments must be submitted and received by DOE on or before September 23, 2011.

ADDRESSES: Comments should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, *Mail Code:* OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov*, or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by e-mail to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 5, 2009, ITC applied to the DOE to amend Presidential Permit No. PP–230–3 by authorizing ITC to replace a failed 675–MVA transformer with two 700–MVA phase-shifting transformers connected in series at ITC's Bunce Creek Station in Marysville, Michigan.

DOE issued a notice of ITC's application in the **Federal Register** on February 10, 2009 (74 FR 6607), requesting that any comments, protests, or motions to intervention be filed by March 12, 2009. Numerous responsive documents were filed, including late requests to intervene. The filings raised various issues, including the need to review the operational protocols for the facilities with the installation of the new transformers, also known as phase angle regulators (PARs).

On August 9, 2011, DOE received Supplemental Reply Comments from ITC, which completed the ITC response to earlier comments filed in the proceeding by the Midwest Independent Transmission System Operator (MISO), Inc. and the Independent Electricity System Operator of Ontario. According to ITC, the supplemental filing provided the operational agreements required to complete ITC's application in the amendment proceeding, including a letter of agreement between ITC and MISO assigning functional control of the subject facilities at the Bunce Creek Station to MISO.

ITC requested that DOE accept this filing as sufficient to allow DOE to approve its application to amend the ITC Presidential permit on an expedited basis without further notice so that the transformers can be placed into service and benefits from controlling the Lake Erie loop flow can be begin. ITC has also indicated that placing the PARs into service now will also allow the parties to better assess the various impacts of PARs operations and thus, better determine if the current operational procedures would need to be modified.

However, DOE is interested in receiving comments from prior participants in this proceeding and other interested persons on this most recent filing by ITC before deciding on how to proceed on ITC's amendment application. In particular, DOE is interested in obtaining the views of other affected utilities and system operators on the sufficiency of the operating principles provided by ITC.

Procedural Matters: Any person desiring to be heard in response to this notice should file written comments with DOE. Fifteen copies of such comments should be sent to the address provided above on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Stephen J. Videto, ITC*Transmission*, 27175 Energy Way, Novi, MI 48377 and AND John R. Staffier, Stuntz, Davis & Staffier, P.C., 555 Twelfth Street, NW., Suite 630, Washington, DC.

Copies of the supplemental filing will be made available, upon request, for public inspection and copying at the address provided above or it may be reviewed or downloaded electronically at *http://energy.gov/node/292291.* All of the documents filed in the OE Docket No. PP–230–4 proceeding may be viewed by going to the pending permits page at *http://energy.gov/node/11845* and scrolling to the Docket No. PP–230–4 section.

Issued in Washington, DC, on August 18, 2011.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–21635 Filed 8–23–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0850; FRL–8886–6]

Chlorpyrifos Registration Review; Preliminary Human Health Risk Assessment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of Wednesday, July 6, 2011, concerning the availability of the chlorpyrifos registration review; preliminary human health risk assessment. This document extends the comment period for 30 days, from Tuesday, September 6, 2011 to Thursday, October 6, 2011.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0850, must be received on or before Thursday, October 6, 2011.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of Wednesday, July 6, 2011.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8589; *e-mail address: myers.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period for the chlorpyrifos reregistration review, preliminary human health risk assessment, established in the **Federal Register** of Wednesday, July 6, 2011 (76 FR 39399) (FRL–8878–9). The document announced the availability of the human health assessment, along with all supporting documents, and commenced a 60-day public comment period that would end on September 6, 2011.

This preliminary assessment incorporates new information that was not available at the time of the last assessment in 2000. Since 2000, several Scientific Advisory Panels have been held specifically on chlorpyrifos and some of the Agency's science policies and methods have changed. Based on the extant data and assumptions made in the preliminary assessment, risks have been preliminarily identified for drinking water, handlers, and residential bystanders. A Reader's Guide accompanied the preliminary human health assessment that detailed some of these exposure assumptions and remaining evaluations needed on the hazard assessment.

As of early August, eight comments have been submitted to the EPA docket requesting a 60-day extension of the comment period based on the complex scientific issues and precedent setting policy applications. The submitters are Dow AgroSciences, Gharda Chemicals Limited, Agricultural Retailers Association, California Citrus Mutual, California Grape and Tree Fruit League, Oregonians for Food and Shelter, CropLife America and the Washington Friends of Farms and Forests.

In recognition of the complex, robust scientific database and mechanistic studies available for chlorpyrifos, the Agency will extend the public comment period by 30 days to end on October 6, 2011. Subsequent to this public comment period, the Agency will be revising the human health assessment based on a full weight of the evidence evaluation of all available data, and consideration of all comments received during the comment period as well as any additional information received on the health and exposure analyses. EPA is hereby extending the comment period, which was set to end on Tuesday, September 6, 2011, to Thursday, October 6, 2011.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the Wednesday, July 6, 2011 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, chlorpyrifos, pesticides, and pests.

Dated: August 18, 2011.

Peter Caulkins,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticides Programs.

[FR Doc. 2011–21677 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9455–9]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Williams Four Corners, LLC, Sims Mesa CDP Compressor Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit (Permit Number P026R2) issued by the New Mexico Environment Department, Air Quality Bureau (NMED). Specifically, the Administrator has granted the April 14, 2010 petition, submitted by WildEarth Guardians and San Juan Citizens Alliance (Petitioners) to object to the March 19, 2010, operating permit issued to Williams Four Corners, LLC, for the Sims Mesa Central Delivery Point (CDP) compressor station in northwestern Rio Arriba County, New Mexico. Pursuant to sections 307(b) and 505(b)(2) of the Clean Air Act (CAA), a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice appears in the **Federal Register**.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, petition, and other supporting information. You may view the hard copies Monday through Friday, from 9 a.m. to 3 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order for the Williams Four Corners, LLC, Sims Mesa CDP Compressor Station is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/simsmesa_response2010.pdf*

FOR FURTHER INFORMATION CONTACT: Jeffrey Robinson at (214) 665–7250, *e-mail address: robinson.jeffrey@epa.gov* or the above EPA, Region 6 address.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review, and object to as appropriate, a Title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a Title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issue arose after this period.

EPA received a petition from the Petitioners dated April 14, 2010, requesting that EPA object to the issuance of the Title V operating permit to Williams Four Corners, LLC., for the operation of the Sims Mesa CDP Compressor Station in northwestern Rio Arriba County, New Mexico for the following reasons: (1) The Title V permit fails to ensure compliance with the Prevention of Significant Deterioration and Title V requirements; (2) the Title V permit fails to ensure prompt reporting of deviations; (3) the

Title V permit fails to require sufficient periodic monitoring; and (4) Condition 6.1.1 of the Title V permit is contrary to applicable requirements.

On July 29, 2011, the Administrator issued an order granting the petition. The order explains the reasons behind EPA's conclusion to grant the petition.

Dated: August 16, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–21627 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9455–6]

Clean Water Act Section 303(d): Final Agency Action on 16 Total Maximum Daily Loads (TMDLs) in Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the final agency action on 16 TMDLs established by EPA Region 6 for waters listed in the State of Arkansas, under section 303(d) of the Clean Water Act (CWA). Documents from the administrative record files for the final 16 TMDLs, including TMDL calculations may be viewed at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm.*

ADDRESSES: The administrative record files for these 16 TMDLs may be obtained by writing or calling Ms. Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

EPA Takes Final Agency Action on 16 TMDLs

By this notice EPA is taking final agency action on the following 16 TMDLs for waters located within the State of Arkansas:

Segment-reach	Waterbody name	Pollutant
08040202–006	Bayou de L'Outre	Chloride, Sulfate, TDS.
08040202–007	Bayou de L'Outre	Chloride, Sulfate, TDS.
08040202–008	Bayou de L'Outre	Chloride, Sulfate, TDS.
08040203–010	Saline River	TDS.
08040204–006	Saline River	TDS.
08040206–015	Big Cornie Creek	Sulfate.
08040206–016	Little Cornie Creek	Sulfate.
08040206–716	Little Cornie Bayou	Sulfate.
08040206–816	Little Cornie Bayou	Sulfate.
08040206–916	Walker Branch	Sulfate

EPA requested the public to provide EPA with any significant data or information that might impact the 16 TMDLs at **Federal Register** Notice: Volume 72, Number 241, pages 71409 and 71410 (December 17, 2007). The comments, EPA's response to comments, and the TMDLs may be found at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm.*

Dated: August 16, 2011

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2011–21711 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0001; FRL–8883–3]

SFIREG POM Working Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State, FIFRA Issues Research and Evaluation Group (SFIREG), Pesticide Operations and Management (POM) Working Committee will hold a 2–day meeting, beginning on September 19, 2011, and ending September 20, 2011. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, September 19, 2011, from 8:30 a.m. to 5 p.m. and 8:30 a.m to 12 noon on Tuesday, September 20, 2011.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA. One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington, VA, First Floor, South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5561; *fax number:* (703) 305–1850; *e-mail address: kendall.ron@epa.gov.* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; *telephone number:* (302) 422–8152; *fax:* (302) 422–2435; *e-mail address: aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in pesticide regulation issues affecting States and any discussion between EPA and SFIREG on the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) field implementation issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or FIFRA and those who sell, distribute or use pesticides, as well as any non government organization.

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 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 ID number EPA–HQ–OPP–2011–0001. 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, 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. Tentative Agenda Topics

1. What's up with the Association of American Pesticide Control Officials regarding drift labeling?
2. Buffers for aerial application in forests—Pitch Fork Rebellion Petition—Update.
3. Status of Imprelis.
4. Fumigation Label Workgroup.
5. SCBA Requirements on Fumigation Labels Issue Paper.
6. Real World Web Distributed Labels—Which Model does SFIREG/Program Operations and Management Committee want EPA working on?
7. Regulatory issues with supplemental distributor labels—EPA's Office of General Counsel determination on regulatory status.
8. Distinct labeling project: Developing labels that more clearly differentiate enforceable and advisory language.
9. What are EPA's plans for high yield enforcement actions?
10. Supplemental distributor labels enforcement initiative.
11. Status of Program Accountability and Results Tracking Measures Re-evaluation.
12. Status of the National Pollution Discharge Elimination System permit process.

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection.

Dated: August 2, 2011.

Robert C. McNally,

Acting Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2011–21369 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0662; FRL–8885–2]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period July 1, 2010 to June 30, 2011 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0309.

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:

- 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 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 at the end of the emergency exemption of interest.

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–2010–0662. Publicly available docket materials are available either electronically 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.

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.
2. "Quarantine" and "public health" exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.
3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance

meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions

A. U.S. States and Territories

Arkansas

State Plant Board

Specific Exemption: EPA authorized the use of hop beta acids in beehives to control varroa mite; March 8, 2011 to December 31, 2011. Since this request proposed the use of a new chemical, which has not been registered by EPA, a notice of receipt published in the **Federal Register** on November 17, 2010 (75 FR 70236) with the public comment period closing on December 2, 2010. This request was also granted to CA, CO, GA, HI, ID, IA, LA, MD, MN, MS, NE, ND, OR, TX, WA, WV, WY because the varroa mite is a highly destructive pest and is having a catastrophic effect on honey bee populations. The parasitic mite is considered the primary pest of honeybees and its control is necessary for successful beekeeping. Further, currently available registered products no longer successfully control varroa mites because repeated use has contributed to widespread development of mite resistance. *Contact:* Stacey Groce.

California

Environmental Protection Agency, Department of Pesticide Regulation

Quarantine Exemption: EPA authorized the use of chlorophene to disinfect hard surfaces which may be potentially contaminated with prions; May 2, 2011 to May 2, 2014.

Contact: Princess Campbell.

Specific Exemptions: EPA authorized the use of boscalid on Belgian endive to control sclerotinia (*Sclerotinia sclerotiorum*); October 14, 2010 to February 15, 2011. *Contact:* Stacey Groce.

EPA authorized the use of pyraclostrobin on Belgian endive to control sclerotinia (*sclerotinia sclerotiorum*); October 14, 2010 to February 15, 2011. *Contact:* Stacey Groce.

EPA authorized the use of mancozeb on walnut to control walnut blight; February 24, 2011 to June 15, 2011. *Contact:* Libby Pemberton.

EPA authorized the use of naphthaleneacetic acid-ester on avocado for sprout inhibition; April 15, 2011 to April 15, 2012. *Contact:* Keri Grinstead.

EPA authorized the use of propiconazole on peach and nectarine to control sour rot; May 16, 2011 to November 30, 2011. *Contact:* Andrea Conrath.

EPA authorized the use of hop beta acids in beehives to control varroa mite; June 7, 2011 to December 31, 2011. *Contact:* Stacey Groce.

Colorado

Department of Agriculture

Specific Exemptions: EPA authorized the use of fenpyroximate in beehives to control varroa mite; November 4, 2010 to September 30, 2011. *Contact:* Stacy Groce.

EPA authorized the use of hop beta acids in beehives to control varroa mite; March 8, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of abamectin on dry bulb onion to control thrips; March 8, 2011 to September 30, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of spirotetramat on dry bulb onion to control thrips; March 8, 2011 to September 30, 2011. *Contact:* Keri Grinstead.

Delaware

Department of Agriculture

Specific Exemptions: EPA authorized the use of anthraquinone on corn field and sweet, seed to repel blackbird species and crow; April 20, 2011 to April 18, 2012. *Contact:* Marcel Howard.

EPA authorized the use of dinotefuran on stone and pome fruit to control brown marmorated stink bug; June 24, 2011 to October 15, 2011. *Contact:* Marcel Howard.

Florida

Department of Agriculture and Consumer Services

Crisis: On March 14, 2011 for the use of anthraquinone on rice, seed to repel blackbirds; this program is ongoing, and may continue for up to one year (to March 12, 2012) under a pending specific exemption request submitted by the state. *Contact:* Marcel Howard.

Specific Exemptions: EPA authorized the use of anthraquinone on corn, field and sweet, seed to repel blackbird species and grackle; March 14, 2011 to March 14, 2012. *Contact:* Marcel Howard.

Quarantine Exemption: EPA authorized the use of propiconazole on avocado to control Laurel Wilt; December 18, 2011 to December 18, 2013. *Contact:* Andrea Conrath.

Georgia

Department of Agriculture

Specific Exemption: EPA authorized the use of hop beta acids in beehives to control varroa mite; May 27, 2011 to December 31, 2011. *Contact:* Stacey Groce.

Hawaii

Department of Agriculture

Specific Exemptions: EPA authorized the use of fludioxonil on pineapple to control saprophytic mold; August 26, 2010 to August 26, 2011. *Contact:* Andrea Conrath.

EPA authorized the use of hop beta acids in beehives to control varroa mite; May 17, 2011 to December 31, 2011. *Contact:* Stacey Groce.

Idaho

Department of Agriculture

Specific Exemptions: EPA authorized the use of hop beta acids in beehives to control varroa mite; February 7, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of linuron on lentil to control dog fennel, prickly lettuce; March 8, 2011 to June 20, 2011. *Contact:* Andrea Conrath.

EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; March 8, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of abamectin on onion, dry bulb to control thrips; June 24, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

Illinois

Department of Agriculture

Specific Exemptions: EPA authorized the use of fenpyroximate in beehives to control varroa mite; September 30, 2010 to September 30, 2011. *Contact:* Stacey Groce.

EPA authorized the use of cyazofamid on basil to control downy mildew; May 5, 2011 to October 15, 2011. *Contact:* Marcel Howard.

Iowa

Department of Agriculture and Land Stewardship

Specific Exemptions: EPA authorized the use of hop beta acids in beehives to control varroa mite; May 17, 2011 to December 31, 2011. *Contact:* Stacey Groce.

Kentucky

Department of Agriculture

Specific Exemptions: EPA authorized the use of fenpyroximate in beehives to control varroa mite; September 24, 2010 to September 30, 2011. *Contact:* Stacey Groce.

Louisiana

Department of Agriculture and Forestry

Crisis: On July 7, 2010 for the use of bifenthrin on sugarcane to control spider mites; this program ended on July 22, 2010. *Contact:* Andrea Conrath.

Specific Exemptions: EPA authorized the use of anthraquinone on corn, sweet and field, seed to repel blackbird species and crow; February 24, 2011 to February 23, 2012. *Contact:* Marcel Howard.

EPA authorized the use of hop beta acids in beehives to control varroa mites; March 11, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of anthraquinone on rice, seed to repel blackbirds; April 21, 2011 to April 18, 2012. *Contact:* Marcel Howard.

Maryland

Department of Agriculture

Specific Exemptions: EPA authorized the use of hop beta acids in beehives to control varroa mites; June 13, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of dinotefuran on stone and pome fruit to control brown marmorated stink bug; June 24, 2011 to October 15, 2011. *Contact:* Marcel Howard.

Massachusetts

Department of Food and Agriculture

Specific Exemption: EPA authorized the use of quinclorac on cranberry to control dodder; March 11, 2011 to July 31, 2011. *Contact:* Marcel Howard.

Michigan

Department of Agriculture

Specific Exemptions: EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel sandhill crane; February 25, 2011 to January 21, 2012. *Contact:* Marcel Howard.

EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; March 8, 2011 to September 30, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of kasugamycin on apple to control fire blight; April 6, 2011 to April 1, 2012. Since the applicant proposed the use of a new chemical which has not been registered by the EPA, a Notice of Receipt was published in the **Federal Register** on March 2, 2011 (76 FR 11454). The rationale for emergency approval of this use is that kasugamycin is needed to control streptomycin-resistant strains of *Erwinia amylovora,* the causal pathogen of fire blight, due to the lack of available alternatives and effective control practices. Without the use of kasugamycin and if weather conditions are present which favor a fire blight disease epidemic, it is likely that Michigan apple growers could suffer 50% yield losses. *Contact:* Keri Grinstead.

EPA authorized the use of abamectin on onion, dry bulb to control thrips; April 15, 2011 to March 31, 2012. *Contact:* Keri Grinstead.

Minnesota

Department of Agriculture

Specific Exemptions: EPA authorized the use of abamectin on onion, dry bulb to control thrips; July 12, 2010 to September 15, 2010. *Contact:* Keri Grinstead.

EPA authorized the use of sprirotetramat on onion, dry bulb, to control thrips; July 12, 2010 to September 15, 2010. Since this request proposed the use of a chemical whose registration had been canceled, a Notice of Receipt was published in the **Federal Register** on July 30, 2010 (75 FR 44946). The rationale for emergency approval of this use is that onion thrips are sucking insects which both directly damage the crop and also vector the plant disease Iris Yellow Spot Virus. The use of spirotetramat is necessary to ensure thrips control in areas experiencing thrips resistance to available alternatives and, in particular, where 6–8 seasonal applications of alternative pesticides are required to achieve adequate control. *Contact:* Keri Grinstead.

EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel sandhill crane; February 18, 2011 to February 26, 2012. *Contact:* Marcel Howard.

EPA authorized the use of hop beta acids in beehives to control varroa mite; March 8, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; March 21, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

Mississippi

Department of Agriculture and Commerce

Specific Exemptions: EPA authorized the use of fenpyroximate in beehives to control varroa mite; October 15, 2010 to September 30, 2011. *Contact:* Stacey Groce.

EPA authorized the use of hop beta acids in beehives to control varroa mite; March 8, 2011 to December 31, 2011. *Contact:* Stacey Groce.

Missouri

Department of Agriculture

Specific Exemption: EPA authorized the use of fenpyroximate in beehives to control varroa mite; September 30, 2010 to September 30, 2011. *Contact:* Stacey Groce.

Nebraska

Department of Agriculture

Specific Exemption: EPA authorized the use of hop beta acids in beehives to control varroa mite; April 7, 2011 to December 31, 2011. *Contact:* Stacey Groce.

Nevada

Division of Agriculture, Department of Business and Industry

Specific Exemption: EPA authorized the use of sprirotetramat on onion, dry bulb to control thrips; March 21, 2011 to September 30, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of bifenazate on timothy for control of Banks grass mite; May 17, 2011 to September 1, 2011. *Contact:* Andrea Conrath.

New Jersey

Department of Environmental Protection

Specific Exemption: EPA authorized the use of dinotefuran on stone and pome fruit to control brown marmorated stink bug; June 24, 2011 to October 15, 2011. *Contact:* Marcel Howard.

New York

Department of Environmental Conservation

Specific Exemptions: EPA authorized the use of abamectin on onion, dry bulb to control thrips; February 4, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; February 4, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

North Carolina

Department of Agriculture and Consumer Services

Specific Exemption: EPA authorized the use of dinotefuran on stone and pome fruit to control brown marmorated stink bug; June 24, 2010 to October 15, 2011. *Contact:* Marcel Howard.

North Dakota

Department of Agriculture

Specific Exemption: EPA authorized the use of hop beta acids in beehives to control varroa mite; April 7, 2011 to December 31, 2011. *Contact:* Stacey Groce.

Oregon

Department of Agriculture

Specific Exemption: EPA authorized the use of fenoxaprop-p-ethyl on grasses grown for seed to control annual grass weeds; February 4, 2011 to September 15, 2011. *Contact:* Andrea Conrath.

EPA authorized the use of hop beta acids in beehives to control varroa mite; February 7, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; March 21, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of bifenthrin on orchardgrass to control orchardgrass billbug; April 6, 2011 to November 15, 2011. *Contact:* Andrea Conrath.

EPA authorized the use of abamectin on onion, dry bulb to control thrips; June 24, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of fipronil on turnip and rutabaga to control cabbage maggot. Since this request proposed a use which is IR4-supported, has been requested in 5 or more previous years, and a petition for tolerance has not been submitted to the Agency, a Notice of Receipt was published in the **Federal Register** on April 6, 2011 (76 FR 19093). The rationale for emergency approval of this use is that no pesticides or practices are currently available for use in turnip and rutabaga, to provide adequate control of cabbage maggots. If not controlled, this insect pest is expected to cause significant yield and economic losses due to their damaging effects from feeding on the turnip and rutabaga roots. June 24, 2011 to September 30, 2011. *Contact:* Andrea Conrath.

Pennsylvania

Department of Agriculture

Specific Exemption: EPA authorized the use of dinotefuran on stone and pome fruit to control brown marmorated stink bug; June 24, 2011 to October 15, 2011. *Contact:* Marcel Howard.

South Dakota

Department of Agriculture

Specific Exemptions: EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel ring-necked pheasant; March 8, 2011 to March 3, 2012. *Contact:* Marcel Howard.

EPA authorized the use of anthraquinone on sunflower, seed to repel ring-necked pheasant; March 11, 2011 to March 2, 2012. *Contact:* Marcel Howard.

Texas

Department of Agriculture

Quarantine Exemption: EPA authorized the use of potassium chloride in creeks to control zebra mussels; August 24, 2010 to March 24, 2011. *Contact:* Marcel Howard.

Specific Exemptions: EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; January 19, 2011 to July 30, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel sandhill crane; February 18, 2011 to March 8, 2012. *Contact:* Marcel Howard.

EPA authorized the use of dinotefuran on rice to control rice stink bug (Oebalus pugnax); April 5, 2011, to October 30, 2011. Since this request proposed a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency a notice of receipt published in the **Federal Register** on March 2, 2011 (76 FR 11453) with the public comment period closing on March 17, 2011. This request was granted because the Applicant demonstrated that rice stink bug resistance is occurring in several areas. In addition, the current weather conditions are contributing to urgent and non-routine pest problems. Rice growers would likely incur a significant economic loss without use of dinotefuran. *Contact:* Libby Pemberton.

EPA authorized the use of fenpyroximate in beehives to control varroa mite; April 8, 2011 to September 30, 2011. *Contact:* Stacey Groce.

EPA authorized the use of hop beta acids in beehives to control varroa mite; April 15, 2011 to December 31, 2011. *Contact:* Stacey Groce.

Utah

Department of Agriculture and Food

Specific Exemptions: EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; March 21, 2011 to September 1, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel sandhill crane and pheasant; April 5, 2011 to April 5, 2012. *Contact:* Marcel Howard.

Vermont

Department of Agriculture, Food, and Markets

Specific Exemption: EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel blackbird species and crow; April 15, 2011 to April 14, 2012. *Contact:* Marcel Howard.

Virginia

Department of Agriculture and Consumer Services

Specific Exemption: EPA authorized the use of dinotefuran on stone and pome fruit to control brown marmorated stink bug; June 24, 2011 to October 15, 2011. *Contact:* Marcel Howard.

Washington

Department of Agriculture

Specific Exemptions: EPA authorized the use of lambda-cyhalothrin on asparagus to control aphids; August 31, 2010 to September 30, 2010. *Contact:* Libby Pemberton.

EPA authorized the use of hop beta acids in beehives to control varroa mites; February 7, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of linuron on lentil to control dog fennel, prickly lettuce; March 8, 2011 to June 20, 2011. *Contact:* Andrea Conrath.

EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; March 21, 2011 to October 31, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of abamectin on onion, dry bulb to control thrips; June 21, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

West Virginia

Department of Agriculture

Specific Exemptions: EPA authorized the use of hop beta acids in beehives to control varroa mite; April 7, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of dinotefuran on stone and pome fruit to control brown marmorated stink bug; June 24, 2011 to October 15, 2011. *Contact:* Marcel Howard.

Wisconsin

Department of Agriculture, Trade, and Consumer Protection

Crisis: On August 16, 2010 for the use of pyrethrin on aquatic sites to control red swamp crayfish; this program ended on August 31, 2010. *Contact:* Stacey Groce.

Specific Exemptions: EPA authorized the use of chlorpyrifos on ginseng to control soil larvae (rootworms,

wireworms, grubs, cutworms); August 9, 2010 to November 15, 2010. *Contact:* Stacey Groce.

EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel sandhill crane; March 31, 2011 to March 23, 2012. *Contact:* Marcel Howard.

EPA authorized the use of abamectin on onion, dry bulb to control thrips; May 16, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

EPA authorized the use of spirotetramat on onion, dry bulb to control thrips; May 16, 2011 to September 15, 2011. *Contact:* Keri Grinstead.

Wyoming

Department of Agriculture

Specific Exemption: EPA authorized the use of hop beta acids in beehives to control varroa mites; April 7, 2011 to December 31, 2011. *Contact:* Stacey Groce.

EPA authorized the use of diflubenzuron in alfalfa for control of various grasshopper and cricket species. Since this request proposed a use which is IR4-supported, has been requested in 5 or more previous years, and a petition for tolerance has not been submitted to the Agency, a Notice of Receipt was published in the **Federal Register** on April 6, 2011 (76 FR 19092). The rationale for emergency approval of this use is that higher than normal populations of these insect pests were anticipated based upon early surveys, and available control practices and pesticides would not provide adequate control under the extreme outbreak conditions. Additionally, other pesticides available posed higher risk to beneficial and pollinator insects. Adequate control of the outbreak was needed to avert significant economic losses from the damaging feeding activities of these species. May 26, 2011 to October 31, 2011. *Contact:* Andrea Conrath.

B. Federal Departments and Agencies

Agriculture Department

Quarantine: EPA authorized the use of paraformaldehyde on containment areas and equipment to control infectious agents; September 7, 2010 to August 31, 2013. *Contact:* Princess Campbell.

EPA authorized the use of *Bacillus thuringiensis* on cotton to control pink bollworm; May 2, 2011 to May 2, 2014. *Contact:* Andrea Conrath.

EPA authorized the use of diazinon to treat soil under host plants to eradicate non-indigenous exotic fruit fly pests of the family *Tephritidae;* June 13, 2011 to June 13, 2014. *Contact:* Stacey Groce.

Interior Department

Bureau of Reclamation

Quarantine: EPA authorized the use of *Pseudomonas fluorescens* in three lower Colorado river dams and their associated power generation facilities and piped-irrigation water distribution systems to control invasive zebra mussels (*Dreissena polymorpha*) and quagga mussels (*Dreissena bugenis*); August 26, 2010 to August 26, 2013. Since the applicant proposed the use of a new chemical which has not been registered by the EPA, a Notice of Receipt was published in the **Federal Register** on November 12, 2009 (74 FR 58287). The rationale for emergency approval of this use is to limit the distribution of these invasive species infestations which are causing physical obstruction of flow in water conveyance systems reducing delivery capacities, pumping capabilities, and hydropower generation functions. *Contact:* Keri Grinstead.

National Aeronautics and Space Administration

Specific Exemption: EPA authorized the use of ortho-phthalaldehyde in the International Space Station to control microbacteria; April 15, 2011 to April 15, 2012. *Contact:* Debra Rate.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 15, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–21374 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0038; FRL–8884–1]

Student Services Contract EP–11–D–000403 Yin Gu; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Student Services Contract EP–11–D–000403 Yin Gu in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Student Services Contract EP–11–D–000403 Yin Gu has been awarded multiple contracts to perform work for OPP, and access to this information will enable Student Services Contract EP–11–D–000403 Yin Gu to fulfill the obligations of the contract.

DATES: Student Services Contract EP–11–D–000403 Yin Gu will be given access to this information on or before August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8338; e-mail address: *steadman.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Contractor Requirements

Under this contract number, the contractor will perform the following: Under Contract No. Student Services Contract EP–11–D–000403 Yin Gu will analyze chemical form and concentration in sub-cellular samples, tissues, and exposure media, and prepare solutions for chemical dosing and concentration analyses as requested. The student will process and

analyze samples using a variety of analytical instrumentation which may include LC and GC using a variety of detectors. The student will assist in general laboratory activities which may include one or more of the following: Conducting routine chemical and biochemical analyses, preparation of common reagents, and cleaning of laboratory glassware. The student shall maintain careful and accurate records in a laboratory notebook, record results in summary spreadsheets, write-up summary reports of sample analyses following provided guidance, and participate in research group meetings. The student will assist in the review and entry of chemical structural information in databases as required. The notebook and all other data produced under this order will be the property of the Environmental Protection Agency. This contract involves no subcontractors.

OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Student Services Contract EP–11–D–000403 Yin Gu, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Student Services Contract EP–11–D–000403 Yin Gu is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Student Services Contract EP–11–D–000403 Yin Gu until the requirements in this document have been fully satisfied. Records of information provided to Student Services Contract EP–11–D–000403 Yin Gu will be maintained by EPA Project Officers for these contracts. All information supplied to Student Services Contract EP–11–D–000403 Yin Gu by EPA for use in connection with these contracts will be returned to EPA when Student Services Contract EP–11–D–000403 Yin Gu has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: August 16, 2011.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2011–21525 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0038; FRL–8885–7]

Sheena Shipley; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Sheena Shipley in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Sheena Shipley has been awarded multiple contracts to perform work for OPP, and access to this information will enable Sheena Shipley to fulfill the obligations of the contract.

DATES: Sheena Shipley will be given access to this information on or before August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–8338, *steadman.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Contractor Requirements

Under Contract No. EP–11–J–000038 (Student Services Contract), Sheena Shipley will analyze chemical form and concentration in sub-cellular samples, tissues, and exposure media, and prepare solutions for chemical dosing and concentration analyses as requested. The student will process and analyze samples using a variety of analytical instrumentation which may include Liquid Chromatography and Gas Chromatography using a variety of detectors. The student will assist in general laboratory activities which may include one or more of the following: Conducting routine chemical and biochemical analyses, preparation of common reagents, and cleaning of laboratory glassware. The student shall maintain careful and accurate records in a laboratory notebook, record results in summary spreadsheets, write-up summary reports of sample analyses following provided guidance, and participate in research group meetings. The student will assist in the review and entry of chemical structural information in databases as required. The notebook and all other data produced under this contract will be the property of the Environmental Protection Agency.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Sheena Shipley, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Sheena Shipley is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Sheena Shipley until the requirements in this document have been fully satisfied. Records of information provided to Sheena Shipley will be maintained by the EPA Project Officer for this contract. All information supplied to Sheena Shipley by EPA for use in connection with this contract will be returned to EPA when Sheena Shipley has completed the work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: August 16, 2011.

Michael Hardy,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2011–21539 Filed 8–23–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201112–003.

Title: Lease and Operating Agreement between Philadelphia Regional Port Authority and Kinder Morgan Liquids Terminals LLC.

Parties: Philadelphia Regional Port Authority and Kinder Morgan Liquids Terminals, LLC.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Ave. NW., 10th Floor; Washington, DC 20036.

Synopsis: The amendment provides for the construction of an underground pipe tunnel on the leased terminal property.

By Order of the Federal Maritime Commission.

Dated: August 19, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–21616 Filed 8–23–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR 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 September 19, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *BankUnited, Inc.*, Miami Lakes, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Herald National Bank, New York, New York.

In connection with this application, Applicant also has applied to retain voting shares of BankUnited, a federal savings association, and thereby continue to engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

In addition, Applicant also has applied to retain voting shares of BankUnited Investment Services, Inc., Miami Lakes, Florida, and thereby continue to serve as investment adviser, pursuant to section 225.28(b)(6)(i) of Regulation Y.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *ATBancorp*, Dubuque, Iowa; to acquire additional shares of United American Bank, San Mateo, California.

Board of Governors of the Federal Reserve System, August 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–21632 Filed 8–23–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Workshop: Advancing Research on Mixtures; New Perspectives and Approaches for Predicting Adverse Human Health Effects

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Announcement of a workshop.

SUMMARY: The NIEHS is hosting a workshop entitled "Advancing Research on Mixtures: New Perspectives and Approaches for Predicting Adverse Human Health Effects" on September 26–27, 2011 at the Sheraton Chapel Hill, Chapel Hill, NC. This workshop is organized to include plenary sessions and small group breakout sessions on specific topics. It is open to the public to attend as observers. For more information and to register for this workshop, please visit *http://tools.niehs.nih.gov/conferences/dert/mixtures/*. The deadline to register for this workshop is Monday, September 12, 2011. Registration is limited to 85 observers based on available space.

DATES: The workshop will be held September 26–27, 2011, and begin each day at 8:30 a.m. Eastern Daylight Time

and end at 5:30 p.m. on September 26 and 4:15 p.m. on September 27. Registration for observers will close September 12, 2011.

ADDRESSES: The meeting will be held at Sheratón Chapel Hill, 1 Europa Dr., Chapel Hill, NC 27517. Meeting information is available at *http://tools.niehs.nih.gov/conferences/dert/mixtures/.*

FOR FURTHER INFORMATION CONTACT: Dr. Danielle Carlin, Program Administrator, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, MD K3–04, Research Triangle Park, NC 27709, (telephone) 919–541–1409, (e-mail) *danielle.carlin@nih.gov* or Dr. Cynthia Rider, Toxicologist, Division of the National Toxicology Program, NIEHS, P.O. Box 12233, MD K2–12, Research Triangle Park, NC 27709, (telephone) 919–541–7638, (e-mail) *cynthia.rider@nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NIEHS is hosting a workshop to identify and address key issues in mixtures research. For this workshop, the term "mixtures" refers to combined exposures. The NIEHS will use the results from the workshop to inform the development of an intramural and extramural mixtures research strategy. This workshop will also provide input to the scientific community for advancing mixtures research.

Preliminary Agenda and Workshop Objectives

The preliminary agenda and other information are available on the workshop Web site (*http://tools.niehs.nih.gov/conferences/dert/mixtures/*). The meeting is organized with plenary talks and breakout groups for in-depth discussion. The public is invited to attend the breakout groups as observers.

The objectives of this workshop are to:

- Identify and prioritize the knowledge gaps and challenges in mixtures research specific to each of the following disciplines: toxicology, epidemiology, exposure science, risk assessment, and statistics
- Obtain advice on integrating multidisciplinary capabilities to address critical topics in mixtures research
- Provide recommendations for research on key topics
- Inform the development of a long-term NIEHS mixtures research agenda
- Foster collaborations between extramural and NIEHS scientists

Registration

This workshop is open to the public for attendance as observers. Registration is available on-line (*http://tools.niehs.nih.gov/conferences/dert/mixtures/*). The registration deadline is September 12, 2011; however, registration will close sooner if the 85 spaces for observers are filled. At that time, persons wishing to attend the workshop will be placed on a wait list.

Individuals with disabilities who need accommodation to participate in the workshop should contact Dr. Danielle Carlin at 919–541–1409 or *danielle.carlin@nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least 5 business days in advance of the event.

Dated: August 16, 2011.

Linda S. Birnbaum,

Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. 2011–21688 Filed 8–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the short-term (10 year) projection methods and assumptions in projecting Medicare health spending for Parts C and D and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the short run. They will also discuss the long term (75 year) projection methods and assumptions in projecting the National Health Expenditures and Medicare expenditures. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

Meeting Date: September 9, 2011, 9:15 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at HHS headquarters at 200 Independence Ave., SW., Washington, DC 20201, Room 738G.

Comments: The meeting will allocate time on the agenda to hear public comments at the end of the meeting. In lieu of oral comments, formal written comments may be submitted for the record to Donald T. Oellerich, OASPE, 200 Independence Ave., SW., 20201, Room 405F. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Donald T Oellerich (202) 690–7409, *Don.oellerich@hhs.gov.* Note: Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Oellerich by Tuesday September 6, 2011, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. The Panel will likely hear presentations by panel members and HHS staff regarding short range and short range projection methods and assumptions. After any presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for

the formation and use of advisory committees.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–21642 Filed 8–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures

OMB No.: 0970–0230

Description: There is no longer a High Performance Bonus associated with this information collection. The Deficit Reduction Act of 2005 (Pub. L. 109–171) eliminated the funding for the High Performance Bonus (HPB), but we are still requesting that States continue to submit data necessary to calculate the work measures previously reported under the HPB.

Specifically, The TANF program was reauthorized under the Deficit Reduction Act of 2005. The statute eliminated the funding for the HPB under section 403 (a)(4). Nevertheless the Department is required under section 413(d) to annually rank State performance in moving TANF recipients into private sector employment. We are, therefore, requesting that States continue to transmit monthly files of adult TANF recipients necessary to calculate the work measures performance data. To the extent States do not provide the requested information, we will extract the matching information from the TANF Data Report. This may result in calculation of the work performance measures based on sample data, which would provide us less precise information on States' performance.

The Transmission File Layouts form provides the format that States will continue to use for the quarterly electronic transmission of monthly data on TANF adult recipients. States that have separate TANF–MOE files on these programs are also requested to transmit similar files. We are not requesting any changes to the Transmission File Layouts form.

Respondents: Respondents may include any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	42	2	12	1,008

Estimated Total Annual Burden Hours: 1,008

In compliance with the requirements of Section 506(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: ACF Reports Clearance Officer. E-mail address: *infocollection@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 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. 2011–21553 Filed 8–23–11; 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

Proposed Projects

Title: Methodology for Determining Whether an Increase in a State's Child Poverty Rate is the Result of the TANF program—NPRM

OMB No.: 0970–0186

Description: In accordance with Section 413(i) of the Social Security Act and 45 CFR part 284, the Department of Health and Human Services (HHS) intends to extend without change the following information collection requirements. For instances when Census Bureau data show that a State's child poverty rate increased by 5 percent or more from one year to the next, a State may submit independent estimates of its child poverty rate. If HHS determines that the State's independent estimates are not more reliable than the Census Bureau estimates, HHS will require the State to submit an assessment of the impact of the TANF program(s) in the State on the child poverty rate. If HHS determines from the assessment and other information that the child poverty rate in the State increased as a result of the TANF program(s) in the State, HHS will then require the State to submit a corrective action plan.

Respondents: The respondents are the 50 States, the District of Columbia and Puerto Rico; when reliable Census Bureau data become available for the Territories, additional respondents might include Guam and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Optional Submission of Data on Child Poverty from an Independent Source	52	1	8	416
Assessment of the Impact of TANF on the Increase in Child Poverty	52	1	120	6,240
Corrective Action Plan	52	1	160	8,320

Estimated Total Annual Burden Hours: 14,976.

In compliance with the requirements of Section 506(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: ACF Reports Clearance Officer. E-mail address: *infocollection@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; (d) ways to minimize the burden information to be collected; and (e) 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. 2011–21554 Filed 8–23–11; 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

Proposed Projects

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level from a State Program Funded Under Part A of Title IV of the Social Security Act.

OMB No.: 0970–0004.

Description: The Department of Health and Human Services is required to collect these data under section 1124 of Title I of the Elementary and Secondary Education Act, as amended by Public Law 103–382. The data are used by the U.S. Department of Education for allocation of funds for programs to aid disadvantaged elementary and secondary students. Respondents include various components of State Human Service agencies.

Respondents: The 52 respondents include the 50 States, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Statistical Report on Children in Foster Homes and Children Receiving Payments in Excess of the Poverty Level From a State Program Funded Under Part A of Title IV of the Social Security Act	52	1	264.35	13,746.20

Estimated Total Annual Burden Hours: 13,746.20.

In compliance with the requirements of Section 506(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: ACF Reports Clearance Officer. E-mail address: *infocollection@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 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. 2011–21555 Filed 8–23–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0587]

Draft Guidance for Industry on Neglected Tropical Diseases of the Developing World: Developing Drugs for Treatment or Prevention; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Neglected Tropical Diseases of the Developing World: Developing Drugs for Treatment or Prevention." The purpose of this guidance is to assist sponsors in the clinical development of drugs for the treatment or prevention of neglected diseases of the developing world. Specifically, this guidance addresses FDA's current thinking regarding the overall drug development program for the treatment or prevention of neglected tropical diseases (NTDs), including clinical trial designs and internal review standards to support approval of drugs.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 22, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph G. Toerner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6244, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Neglected Tropical Diseases of the Developing World: Developing Drugs for Treatment or Prevention." This guidance addresses section 740 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80), dated October 21, 2009, that directed FDA to provide guidance in the form of general recommendations and regulatory considerations for drugs being developed for the treatment or prevention of NTDs. NTDs, as defined in section 524(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360n(a)(3)), are infectious diseases that generally are rare or absent in developed countries, but are often widespread in developing countries. The availability of new drugs that are safe and effective for treatment or prevention of NTDs could provide public health benefit for overall global health.

The purpose of this draft guidance is to provide recommendations to sponsors and investigators who are involved in the development of drugs for the treatment or prevention of NTDs. This guidance is intended to clarify the regulatory requirements for drug approval in the United States as well as the internal review standards for drugs for NTDs. This guidance is directed at sponsors who lack general knowledge about drug development issues. Potential sponsors should understand that: (1) FDA will review and comment on clinical development programs for NTDs under an investigational new drug application submission, regardless of where the clinical development will take place; (2) FDA can approve a drug for treatment of an NTD not endemic in the United States; (3) the regulatory pathways and internal review standards for approval of drugs for NTDs are the same as for approval of drugs for diseases endemic in the United States; and (4) FDA is committed to exercising its regulatory authorities to facilitate access to therapies that can help reduce morbidity and mortality associated with NTDs.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: August 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21630 Filed 8–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Member Conflict: Risk Prevention and Health Behavior.

Date: September 13, 2011.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Henry, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, 301–435–1717, *henryrr@moil.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21681 Filed 8–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority and Health Disparities; 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 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Revision Applications to Support Environmental Health Disparities Research P20.

Date: August 29, 2011.

Time: 8 a.m. to 12 p.m.

Agendo: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Robert Nettey, MD, Chief, Scientific Review Officer, National Institute on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 496–3996, *netteyr@moil.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: National Center on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Revision Applications to Support Environmental Health Disparities Research (P60).

Date: August 29, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Robert Nettey, MD, Chief, Scientific Review Officer, National Institute on Minority Health, and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 496–3996, *netteyr@moil.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.

Dated: August 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21680 Filed 8–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodegeneration and Stroke Special Emphasis Panel.

Date: September 21, 2011.

Time: 2 to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Risk, Prevention and Intervention for Addictions Study Section.

Date: September 29–30, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Renaissance, Washington, DC 20236.

Contact Person: Gabriel B Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: September 29–30, 2011.

Time: 8 a.m. to 4 p.m.

Agendo: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics B Study Section.

Date: September 29–30, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Richard A Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.

Date: September 29–30, 2011.

Time: 8 a.m. to 6 p.m.

Agendo: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Anna L Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyonn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chromatin Program Projects.

Date: September 29, 2011.

Time: 8:30 a.m. to 6 p.m.

Agendo: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Persan: Ronald Adkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–495–4511, *ranald.adkins@nih.gav.*

Name af Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: ACL and Bone.

Date: September 29–30, 2011.

Time: 10 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 Persan: Baljit S Moonga, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *maongabs@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21683 Filed 8–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed 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 Cancer Institute Special Emphasis Panel, Discovery, Imaging, and Therapeutics.

Date: October 5–6, 2011.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda, 5151 Pooks Hill Road, Bethesda, MD 20814.

Cantact Persan: Peter J. Wirth, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, K08 Grant Application.

Date: October 12, 2011.

Time: 5 to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Persan: Lynn M Amende, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–8328, 301–451–4759, *amendel@mail.nih.gav.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Mechanisms of Cell Signaling in Cancer.

Date: October 13–14, 2011.

Time: 3 to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Cantact Persan: Majed M. Hamawy, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20852, 301–594–5659, *mh101v@nih.gav.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Strategic Partnering to Evaluate Cancer Signature (SPECS II).

Date: October 18–19, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel and Spa, 1600 King Street, Alexandria, VA 22314.

Cantact Persan: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gav.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 18, 2011.

Jennifer S. Spaeth,

Directar, Office af Federal Advisory Committee Policy.

[FR Doc. 2011–21682 Filed 8–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 9, 2011.

Time: 9 a.m. to 4 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, C-wing, 6th Floor, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., 3rd Floor Suite, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gav.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21679 Filed 8–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of 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 materials, 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 Neurological Disorders and Stroke Special Emphasis Panel, Neuro Therapeutics Course.

Date: August 31, 2011.

Time: 2:45 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Officer, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard, MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892–9529, 301–496–5388, *wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21678 Filed 8–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Devices for Clearing Mucus From Endotracheal Tubes

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a worldwide exclusive license, to practice the invention embodied in: HHS Ref. No. E–061–2004/0 "Mucus Shaving Apparatus for Endotracheal Tubes"; U.S. Patent 7,051,737 to EndOclear, LLC, a company incorporated under the laws of the State of Michigan having its headquarters in Petoskey, Michigan. The United States of America is the assignee of the rights of the above inventions. The contemplated exclusive license may be granted in a field of use limited to devices for clearing mucus from endotracheal tubes.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before September 23, 2011 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *Telephone:* (301) 435–5019; *Facsimile:* (301) 402–0220; *E-mail: shmilovm@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: The patent intended for licensure covers an endotracheal tube cleaning apparatus which is inserted into the inside of an endotracheal tube to shave away mucus deposits. Mucus deposits contribute to bacterial growth and put intubated patients at risk for ventilator associated pneumonia (VAP). The preferred embodiment as recited in the claims is a cleaning apparatus with a flexible central tube and an inflatable balloon at its distal end. Affixed to the inflatable balloon are one or more shaving rings each having a squared leading edge to shave away mucus accumulations. In operation, the uninflated cleaning apparatus is inserted into the endotracheal tube and the balloon is then inflated by a suitable inflation device, such as a syringe, until the balloon's shaving rings are pressed against the inside surface of the endotracheal tube. The cleaning apparatus is then pulled out of the endotracheal tube to shave off mucus deposits.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 16, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–21685 Filed 8–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–300; Revision of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form N–300, Application to File Declaration of Intention; OMB Control No. 1615–0078.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the

public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 24, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *uscisfrcomment@dhs.gov*. When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0078 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Doshboord.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information 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, including whether the information will have practical utility;

(2) 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;

(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, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–300; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–300 will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations or professions, or to obtain various licenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85 responses at .75 hours (45 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 64 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: August 18, 2011.

Liana Miranda-Valido,

Management ond Progrom Analyst, Regulotory Products Division, Office of the Executive Secretoriot, U.S. Citizenship ond Immigration Services, Deportment of Homeland Security.

[FR Doc. 2011–21584 Filed 8–23–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–86]

Notice of Submission of Proposed Information Collection to OMB; Emergency Homeowners' Loan Program—Required Data Elements Collection

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is implementing a mortgage relief program entitled the Emergency Homeowners Loan Program. The program will offer a declining balance, deferred payment "bridge loan" (non-recourse, subordinate loan with zero interest) for up to $50,000 to assist eligible homeowners with payments of arrearages, including mortgages, delinquent taxes, insurance premiums, condominium or homeowners association fees; late fees; and certain foreclosure-related attorney's fee. In addition to payment of arrearages, EHLP funds may also be used to assist eligible homeowners to make up to 24 months of mortgage payments on their mortgage principal, interest, taxes and insurance (PITI), as well as condominium/homeowner association fees, as applicable.

DATES: *Comments Due Date:* September 23, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0597) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov*. or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Emergency Homeowners' Loan Program—Required Data Elements Collection.

OMB Approval Number: 2502–0597.

Form Numbers: 96020–EHLP, 96025a–EHLP, 96025b–EHLP, 96022–EHLP, 96023a–EHLP, 96023b–EHLP, 96026–EHLP.

Description of the Need for the Information and its Proposed Use: HUD is implementing a mortgage relief program entitled the Emergency Homeowners Loan Program. The program will offer a declining balance, deferred payment "bridge loan" (non-recourse, subordinate loan with zero interest) for up to $50,000 to assist eligible homeowners with payments of arrearages, including mortgages, delinquent taxes, insurance premiums, condominium or homeowners association fees; late fees; and certain foreclosure-related attorney's fee. In addition to payment of arrearages, EHLP funds may also be used to assist eligible homeowners to make up to 24 months of mortgage payments on their mortgage principal, interest, taxes and insurance (PITI), as well as condominium/homeowner association fees, as applicable.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	36,264	5.915		0.753	161,548

Total Estimated Burden Hours: 161,548.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 18, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–21579 Filed 8–23–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID No. BOEM–2011–0076]

Information Collection Activity: Prospecting for Minerals Other Than Oil, Gas, and Sulphur on the Outer Continental Shelf, Revision of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BOEMRE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under, Prospecting for Minerals Other than Oil, Gas, and Sulphur on the Outer Continental Shelf (OMB No. 1010–0072), and in particular, we are revising BOEMRE Form 0134 to adapt to new advances in technology (digital options) and clarifying requirements for environmental compliance.

DATES: Submit written comments by October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the form that requires the subject collection of information.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled "Enter Keyword or ID," enter BOEM–2011–0076 then click search. Follow the instructions to submit public comments and view supporting and related materials. BOEMRE will post all comments.
- E-mail *cheryl.blundon@boemre.gov*. Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0072 in your comment and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 280, Prospecting for Minerals Other than Oil, Gas, and Sulphur on the Outer Continental Shelf.

BOEMRE Form(s): 0134.

OMB Control Number: 1010–0072.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. An amendment to the OCS Lands Act (Pub. L. 103–426) authorizes the Secretary to negotiate agreements (in lieu of the previously required competitive bidding process) for the use of OCS sand, gravel, and shell resources for certain specified types of public uses. The specified uses will support construction of governmental projects for beach nourishment, shore protection, and wetlands enhancement; or any project authorized by the Federal Government.

Section 1340 states that "* * * any person authorized by the Secretary may conduct geological and geophysical [G&G] explorations in the Outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area."

Section 1352 further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Permittees are to be reimbursed costs of reproducing any G&G data required to be submitted and for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director and is not used in the normal conduct of the business of the permittee. Regulations implementing these responsibilities are in 30 CFR part 280. The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and the OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Prospecting permits are subject to cost recovery under Department of the Interior's implementing policy, and BOEMRE regulations specify service fees for these requests.

We use the information: (1) To ensure there is no environmental degradation, personal harm or unsafe operations and

conditions; (2) the activities do not damage historical or archaeological sites or interfere with other uses; (3) to analyze and evaluate preliminary or planned drilling activities; (4) to monitor progress and activities in the OCS; (5) to acquire G&G data and information collected under a Federal permit offshore; (6) to determine eligibility for reimbursement from the Government for certain costs; and (7) to determine the qualifications of applicants. BOEMRE also uses the information collected to understand the G&G characteristics of hard mineral-bearing physiographic regions of the OCS.

We will protect information considered proprietary according to 30 CFR 280.70, "What data and information will be protected from public disclosure?", 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection," 30 CFR part 252, "OCS Oil and Gas Information Program," and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2). No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion; and as required in the permit.

Description of Respondents: Permittee(s).

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 116 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR part 280	Reporting and recordkeeping requirements	Hour burden
		Non-hour cost burden
Subpart B		
10; 11(a); 12; 13; Permit Form	Apply for permit (BOEMRE Form 0134) to conduct prospecting or G&G scientific research activities, including prospecting/scientific research plan and environmental assessment or required drilling plan.	8
		$2,012
11(b); 12(c)	File notice to conduct scientific research activities related to hard minerals, including notice to BOEMRE prior to beginning and after concluding activities.	8
Subpart C		
21(a)	Report to BOEMRE if hydrocarbon/other mineral occurrences or environmental hazards are detected or adverse effects occur.	1
22	Request approval to modify operations	1
23(b)	Request reimbursement for expenses for BOEMRE inspection	1
24	Submit status and final reports on specified schedule	8
28	Request relinquishment of permit	1
31(b); 73	Governor(s) of adjacent State(s) submissions to BOEMRE: Comments on activities involving an environmental assessment; request for proprietary data, information, and samples; and disclosure agreement.	1
33, 34	Appeal penalty, order, or decision—burden exempt under 5 CFR 1320.4(a)(2), (c).	
Subpart D		
40; 41; 50; 51; Permit Form	Notify BOEMRE and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4
42(b); 52(b)	Advise 3rd party recipient of obligations. Part of licensing agreement between parties; no submission to BOEMRE.	1/3
42(c), 42(d); 52(c), 52(d)	Notify BOEMRE of 3rd party transactions	1
60; 61(a)	Request reimbursement for costs of reproducing data/information and certain processing costs.	1
72(b)	Submit in not less than 5 days comments on BOEMRE intent to disclose data/information.	1
72(d)	Contractor submits written commitment not to sell, trade, license, or disclose data/information.	1
General		
Part 280	General departure and alternative compliance requests not specifically covered elsewhere in part 280 regulations.	2
Permit Form	Request extension of permit time period	1
Permit Form	Retain G&G data/information for 10 years and make available to BOEMRE upon request.	1

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour paperwork cost burden for this collection. There is a $2,012 permit application fee.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality. usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents. Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: August 16, 2011.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–21573 Filed 8–23–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N173; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA law requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before September 23, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Florida Fish & Wildlife Conservation Commission, Fish and Wildlife Research Institute, St. Petersburg, FL; PRT–758093

The applicant requests reissuance of their permit to import biological samples taken from hawksbill sea turtle (*Eretmochelys imbricata*) collected in the wild in Panama and Bermuda, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Thomas McCarthy, New York, NY; PRT–50258A

The applicant requests a permit to import biological samples taken from snow leopards (*Uncia uncial*) in the wild in Mongolia for the purpose of

scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert Oswald, Nazareth, PA; PRT–49806A

Applicant: Mitzy McCorvey, Houston, TX; PRT–50554A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–21650 Filed 8–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–N162;10120–1112–0000–F2]

Kawailoa Wind Energy Generation Facility, Oahu, HI; Draft Habitat Conservation Plan and Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of permit application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Kawailoa Wind Power LLC (applicant), a subsidiary of First Wind LLC, for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA). The applicant is requesting a 20-year ITP pursuant to the ESA to authorize take of six species—four endangered birds, one threatened bird, and one endangered mammal (collectively these six species are hereafter referred to as the "Covered Species"). The permit application includes a draft habitat conservation plan (HCP) describing the applicant's actions and the measures the applicant will implement to minimize, mitigate, and monitor incidental take of the Covered Species, the ITP application also includes a draft Implementing Agreement (IA). The Service also announces the availability of a draft Environmental Assessment (EA) that has been prepared in response to the permit application in accordance with requirements of the National Environmental Policy Act (NEPA). The Service is making the permit application package and draft EA available for public review and comment.

DATES: All comments from interested parties must be received on or before October 11, 2011.

ADDRESSES: Please address written comments to Loyal Mehrhoff, Project Leader, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850. You may also send comments by facsimile to (808) 792–9581.

FOR FURTHER INFORMATION CONTACT: Aaron Nadig, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** above); telephone (808) 792–9400.

SUPPLEMENTARY INFORMATION: The applicant is requesting a 20-year ITP to authorize take of six species—four endangered birds, one threatened bird, and one endangered mammal: The endangered Hawaiian moorhen (*Gallinula chloropus sandvicensis*), Hawaiian coot (*Fulica alai*), Hawaiian duck (*Anas wyvilliana*), Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian hoary bat (*Lasiurus cinereus semotus*), and the threatened Newell's shearwater (*Puffinus auricularis newelli*).

Kawailoa Wind is also applying for an incidental take license (ITL) from the Hawaii Department of Land and Natural Resources (DLNR) to comply with State endangered species laws.

Availability of Documents

You may request copies of the permit application, which includes the draft HCP, IA, and EA, by contacting the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** above). These documents are also available electronically for review on the U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office Web site at *http://www.fws.gov/pacificislands.* Comments and materials the Service receives, as well as supporting documentation we use in preparing the NEPA document, will become part of the public record and will be available for public inspection by appointment, during regular business hours. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal 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.

The Service specifically requests information from the public on whether the application meets the statutory and regulatory requirements for issuing a permit, and identification of any aspects of the human environment that should be analyzed in the EA. We are also soliciting information regarding the adequacy of the HCP to minimize, mitigate, and monitor the proposed incidental take of the Covered Species and to provide for adaptive management, as evaluated against our permit issuance criteria found in section 10(a) of the ESA (16 U.S.C. 1539(a)), and 50 CFR 13.21, 17.22, and 17.32. In compliance with section 10(c) of the ESA (16 U.S.C. 1539(c)), the Service is making the permit application package available for public review and comment for 45 days (see **DATES** section above).

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, under section 10(a) of the ESA (16 U.S.C. 1539(a)), we may issue permits to authorize incidental take of listed fish and wildlife species. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22. If issued, the permittee would receive assurances under the Service's "No Surprises" regulations at 50 CFR 17.32(b)(5) and 50 CFR 17.22(b)(5).

Hawaii Governor Linda Lingle announced in October 2008 a comprehensive alternative energy agreement between the State of Hawaii and the electric companies operating in Hawaii. The initiative is aimed at decisively moving the State away from its dependence on fossil fuels for electricity and ground transportation and toward renewable energy. The State seeks to move Hawaii toward having 70 percent of its energy use coming from alternative energy sources by 2030.

The applicant proposes to construct and operate a new 70-megawatt (MW), 30-turbine commercial wind energy generation facility at Kawailoa on Kamehameha Schools' Kawailoa Plantation lands, approximately 4 miles northeast of Haleiwa town on the north

shore of the island of Oahu, Hawaii. The proposed facility will consist of 30 wind turbine generators (WTGs), a maintenance building, an electrical substation, a battery energy storage system, an underground electrical collection system carrying electrical power from individual WTGs to the electrical substation, an overhead transmission line to connect the substation to the Hawaiian Electric Company transmission line, two permanent unguyed meteorological monitoring towers, and service roads to connect the new WTGs and other facilities to existing highways. Infrastructure development will also include installation, operation, and maintenance of up to four microwave dish antennae on two existing Hawaiian Telcom facilities near the summit of Mt. Kaala in the Waianae Mountains on the Island of Oahu.

The Kawailoa Wind Farm Project will supply wind-generated electricity to the Hawaiian Electric Company. The applicant has developed a draft HCP that addresses the incidental take of the six Covered Species that may occur as a result of the construction and operation of the Kawailoa Wind Farm Project over a period of 20 years. In addition, the draft HCP addresses proposed measures the applicant will implement to minimize, mitigate, and monitor incidental take of the Covered Species.

Another wind energy project, Kaheawa Wind Power I (KWP I), operating on the island of Maui has demonstrated impacts to the Hawaiian petrel (*Pterodroma sandwichensis*), Hawaiian goose (*Branta sandvicensis*), and Hawaiian hoary bat, which have collided with the wind turbine structures at this existing 30-megawatt (MW) 21-turbine project.

Hawaiian moorhen, Hawaiian duck, Hawaiian coot, and Hawaiian stilt are known to exist in wetland locations adjacent to the proposed Kawailoa Wind project site. These four Hawaiian waterbird species are at risk of injury and mortality from post construction wind operations (collisions with wind turbine generators). In addition to the anticipated take by the project, predator trapping poses some risk of harassment due to capture. Moorhen are attracted to traps and moorhen on Oahu have been documented entering live traps.

The Hawaiian hoary bat has been recorded within the project area through the use of acoustic monitoring devices. The data suggest that bat activity increases from March through November and is lowest or absent in the winter. Bat activity was recorded throughout the project area within a wide variety of landscape features, including clearings, along roads, along the edges of tree lines, in gulches and at irrigation ponds. Hawaiian hoary bats are at risk of injury and mortality from wind operations post construction (collisions with wind turbine generators).

The Newell's shearwater is a seabird species that spends a large part of the year at sea, forages in the open ocean, and breeds in the main Hawaiian Islands. Beginning in March and April, adults initiate breeding at colonial nesting grounds in the interior mountains of the main Hawaiian Islands. Fledglings (*i.e.*, young birds learning how to fly) travel from the nesting colony to the sea in the fall (mid-September to mid-December). They are known to be attracted to artificially lighted areas, which can result in disorientation and subsequent fallout (ceasing to be able to fly and involuntarily descending) due to exhaustion. Adult seabirds can collide with buildings, towers, power lines, and other tall structures while flying at night between their nesting colonies and at-sea foraging areas. To date, no Newell's shearwaters have been found to have collided with any structures at wind farm facilities.

Proposed Plan

The draft HCP describes the impacts of take associated with the applicant's activities, and proposes a program to minimize and mitigate take of each of the Covered Species. The applicant is proposing the following mitigation measures on the islands of Oahu, Maui Nui and Kauai: (1) Predator control, fencing, wetland restoration, and vegetation maintenance for the protection of Hawaiian waterbirds at Ukoa Pond on Oahu; (2) restoration of wetland and forested upland habitat at Ukoa Pond for the protection of Hawaiian hoary bat; (3) restoration and management to include fencing, ungulate removal, and predator control of forested habitat on Oahu for Hawaiian hoary bat conservation; and (4) development and testing of a self-resetting cat trap that will be utilized at a Newell's shearwater seabird colony on Kauai. If incidental take of Newell's shearwater exceeds certain specified levels, or if the re-setting cat trap does not prove effective, the applicant will also develop translocation protocols for implementation in the Newell's shearwater recovery effort or contribute to a restoration fund for predator control, social attraction and translocation of Newell's shearwaters to Kahoolawe. The Kawailoa Wind HCP also includes avoidance and minimization measures that will significantly limit the take of listed species due to construction, operation and maintenance of the wind farm. This HCP incorporates adaptive management provisions to allow for modifications to the mitigation and monitoring measures as knowledge is gained during implementation.

The draft EA contains an analysis of three alternatives: (1) Issuance of the ITP to Kawailoa Wind on the basis of the activities described in the proposed HCP (Proposed Action); (2) impacts of issuing an ITP and approving an HCP for the alternate communications site; and (3) No Action (no permit issuance and no measures by the applicant to reduce or eliminate the take of covered species). The draft EA considers the direct, indirect, and cumulative effects of the alternatives, including any measures under the Proposed Action alternative intended to minimize and mitigate such impacts. The draft EA also identifies additional alternatives that were considered but not fully analyzed, as they did not meet the purpose and need of the Proposed Action.

The Service invites comments and suggestions from all interested parties on the draft documents associated with the permit application, and requests that comments be as specific as possible. In particular, information and comments regarding the following topics are requested: (1) Whether the proposed HCP sufficiently minimizes and mitigates the impacts of take to the covered species to the maximum extent practicable over its 20-year term; (2) additional adaptive management or monitoring provisions that may be incorporated into the Proposed Action alternative, and their benefits to listed species; (3) the direct, indirect, or cumulative effects that implementation of either alternative could have on the human environment; (4) other plans or projects that might be relevant to this action; and (5) any other information pertinent to evaluating the effects of the proposed action on the human environment.

Authority

This notice is provided under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulations (40 CFR 1506.6). The public process for the proposed Federal action will be completed after the public comment period, at which time we will evaluate the permit application, the HCP and associated documents (including the EA), and comments submitted thereon to determine whether or not the proposed action meets the requirements of section 10(a) (16 U.S.C.

1539(a)) of the ESA and has been adequately evaluated under NEPA.

Dated: August 10, 2011.

Richard R. Hannan;

Deputy Regional Director.

[FR Doc. 2011–21614 Filed 8–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes an extension of Gaming between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Compact until February 26, 2012.

Dated: August 17, 2011.

George Skibine,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2011–21652 Filed 8–23–11; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT–06000–01–L10200000–PG0000]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held September 20 and 21, 2011. The September 20 meeting will begin at 10 a.m. with a 30-minute public comment period and will adjourn at 5 p.m. The September 21 meeting will begin at 8 a.m. with a 30-minute public comment period and will adjourn at 3 p.m.

ADDRESSES: The meetings will be in the Bureau of Land Management's Central Montana District Office, at 920 NE. Main Street in Lewistown, Montana.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon these topics/activities: meeting notes of the RAC's previous meeting, roundtable discussion of RAC members' concerns, a discussion of BLM youth education programs, consider a recommendation about one-time river use permits, hear district managers' updates, a briefing on the status of the HiLine Resource Management Plan, discussions of BLM's small parcel list and possible exchanges with the State of Montana, and administrative details.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: Gary L. "Stan" Benes, Central Montana District Manager, Lewistown Field Office, 920 NE. Main, Lewistown, Montana 59457, (406) 538–1900, *gary_benes@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 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.

Theresa M. Hanley,

Acting State Director.

[FR Doc. 2011–21613 Filed 8–23–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0811–8127; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 1, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 8, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Maricopa County

el chaparral, 4935 E. Lafayette Blvd., Phoenix, 11000631

COLORADO

Park County

Threemile Gulch, Address Restricted, Hartsel, 11000632

MAINE

Knox County

Land's End Historic District, Marshall Point & Cottage Rds., Lentine & Land's End Lns., Saint George, 11000633

MICHIGAN

Allegan County

Michigan Paper Company Mill Historic District, 200 Allegan St., Plainwell, 11000636

Leelanau County

Campbell—De Young Farm, 9510 E. Cherry Bend Rd. (Elmwood Charter Township), Cherry Bend, 11000634

Livingston County

Warner, Timothy and Lucretia Jones, Homestead, 4001 W. Buno Rd. (Brighton Township), Brighton, 11000635

OKLAHOMA

Grady County

Knippelmeir Farmstead, 672 OK 152, Minco, 11000638

Kay County

Sheets House, 1350 W. Peckingham Rd., Newkirk, 11000639

Lincoln County

Phillips 66 Station No. 1423, (Route 66 in Oklahoma MPS) 701 S. Manvel, Chandler, 11000640

Tulsa County

Tulsa Civic Center Historic District, Between W. 3rd & 6th Sts. & S. Houston & Denver Aves., Tulsa, 11000641

PENNSYLVANIA

Chester County

Atkinson, Clement, Memorial Hospital, 822–824 E. Chestnut St., Coatesville City, 11000642

Clearfield County

Schrot, Joseph F. and Anna B., Farm, (Agricultural Resources of Pennsylvania MPS) 880 Carbon Mine Rd. (Lawrence Township), Hyde, 11000643

Dauphin County

Allerman, Conrad and Margaret, House, 1412 Farmhouse Ln. (Lower Swatara Township), Ebenezer, 11000644

Steelton High School, (Educational Resources of Pennsylvania MPS) 100 S. 4th St., Steelton Borough, 11000645

Indiana County

Clark, Sen. Joseph O., House, 247 1st Ave., Glen Campbell Borough, 11000646

Lackawanna County

Scranton Chamber of Commerce Building, 426 Mulberry Ave., Scranton, 11000647

Philadelphia County

Philadelphia, Wilmington and Baltimore Railroad Freight Shed, 1001 S. 15th St., Philadephia, 11000649

Tasty Baking Company Building, 2801 W. Hunting Park Ave., Philadelphia, 11000648

SOUTH CAROLINA

Lancaster County

Perry—McIlwain—McDow House, 2297 Douglas Rd., Lancaster, 11000650

TEXAS

Bexar County

Alamo Stadium and Gymnasium, 110 Tuleta Dr., San Antonio, 11000651

Jackson County

Edna Theatre, 201 W. Main St., Edna, 11000652

VIRGINIA

Clarke County

Cleridge, 1649 Old Charles Town Rd., Stephenson, 11000653

In the interest of preservation, the comment period for the following resource has been shortened to (3) three days.

NORTH CAROLINA

Mecklenburg County

Barringer Hotel, 426 N. Tryon St., Charlotte, 11000637

[FR Doc. 2011–21588 Filed 8–23–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–780]

In the Matter of Certain Protective Cases and Components Thereof Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation To Add a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 3) granting Complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado ("Otter"). 76 FR. 38417 (June 30, 2011). The complaint alleged 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 protective cases and components thereof by reason of infringement of various claims of United States Patent Nos. 7,933,122; D600,908; D617,784; D615,536; D617,785; D634,741; and D636,386; and United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187. The complaint named twenty nine respondents, including Cellaris Franchise, Inc. of Alpharetta, Georgia ("Cellaris").

On July 19, 2011, Otter filed a motion under Commission Rule 210.14(b), for leave to amend the Complaint and Notice of Investigation to add Global Cellular, Inc. of Alpharetta, Georgia as respondent. On July 29, 2011, the Commission investigative attorney filed a response in support of the motion. No other party filed a response.

On August 3, 2011, the ALJ issued the subject ID, granting Otter's motion pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)). No party petitioned for review of the ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: August 18, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–21587 Filed 8–23–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–720]

In the Matter of Certain Biometric Scanning Devices, Components Thereof, Associated Software, and Products Containing the Same; Notice of Commission Decision To Review-in-Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions Regarding the Issues Under Review and Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding a violation of section 337 in the above-captioned investigation, and is requesting written submissions regarding the issues under review and remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 17, 2010 based on a complaint filed on May 11, 2010, by Cross Match Technologies, Inc. ("Cross Match") of Palm Beach Gardens, Florida. 75 FR 34482–83. The complaint, as amended on May 26, 2010, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 biometric scanning devices, components thereof, associated software, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 5,900,993 ("the '993 patent"); 7,203,344 ("the '344 patent"); 7,277,562 ("the '562 patent"); and 6,483,932 ("the '932 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337, and names two respondents, Suprema, Inc. ("Suprema") of Korea and Mentalix, Inc. of Plano, Texas.

On November 10, 2010, the Commission issued notice of its determination not to review the ALJ's ID granting Cross Match's motion to amend the complaint by adding allegations of infringement as to claims 5–6, 12, and 30 of the '562 patent, and claims 7, 15, 19, and 45 of the '344 patent. On December 27, 2010, the Commission issued notice of its determination not to review the ALJ's ID granting Cross Match's motion to terminate the investigation as to claims 6–8, 13–15, and 19–21 of the '932 patent (eliminating this patent from the investigation); claims 13 and 16 of the '993 patent; claims 4, 15, 30, 32, and 44 of the '344 patent; and claim 2 of the '562 patent based on withdrawal of these claims from the complaint. On March 18, 2011, the Commission issued notice of its determination not to review the ALJ's ID granting Cross Match's motion for summary determination that it satisfies the economic prong of the domestic industry requirement.

On June 17, 2011, the ALJ issued his final ID finding a violation of section 337 by Suprema by reason of infringement of one or more of claims 10, 12, and 15 of the '993 patent. The ALJ also found a violation of section 337 by reason of infringement of claim 19 of the '344 patent. The ALJ found no violation of section 337 with respect to the '932 patent. He also issued his recommendation on remedy and bonding during the period of Presidential review. On July 5, 2011, Cross Match, respondents, and the Commission investigative attorney ("IA") each filed a petition for review of the final ID; and on July 13, 2011, each filed a response to the other party's opposing petition.

Upon considering the parties' filings, the Commission has determined to review-in-part the ID. Specifically, the Commission has determined to review the ALJ's finding of a violation of section 337 based on infringement of claim 19 of the '344 patent. The Commission has determined not to review the remainder of the ID.

On review, with respect to violation, the parties are requested to submit briefing limited to the following issues:

(1) Who infringes claim 19 of the '344 patent and what type of infringement has occurred? Please consider direct, contributory, and induced infringement.

(2) Is there is a sufficient nexus between the infringer's unfair acts and importation to find a violation of section 337? *See, e.g., Dynamic Random Access Memories, Components Thereof and Products Containing Same,* Inv. No. 337–TA–242, Comm'n Op. (Sept. 21, 1987); *Certain Cardiac Pacemakers and Components Thereof,* Inv. No. 337–TA–162, 1984 WL 273827, Order No. 37 (March 21, 1984).

In addressing these issues, the parties are requested to make specific reference to the evidentiary record and to cite relevant authority.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action.

See section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005. 70 FR. 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review that specifically address the Commission's questions set forth in this notice. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, and such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 30, 2011. Reply submissions must be filed no later than the close of business on September 8. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42–46 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–46.

By order of the Commission.

Issued: August 18, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–21586 Filed 8–23–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Advisory Committee on Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, United States Department of Justice.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the National Advisory Committee on Violence Against Women(hereinafter "NAC").

DATES: The meeting will take place on Tuesday, September 13 from 9 a.m. to 5 p.m. and Wednesday, September 14, 2011 from 9 a.m. to 12:30 p.m.

ADDRESSES: The meeting will take place at the Hilton Garden Inn 1225 First Street NE., Washington, District of Columbia, 20002. The public is asked to pre-register by September 6, 2011 for the meeting due to security considerations and so that there is adequate space (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; *e-mail: Catherine.poston@usdoj.gov;* or *fax:* (202) 305–2589. You may also view information about the NAC on the Office on Violence Against Women Web site at: *http://www.ovw.usdoj.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act. The National Advisory Committee on Violence Against Women (NAC) was re-chartered on March 3, 2010 by the Attorney General. The purpose of this federal advisory committee is to provide advice and recommendations to the Department of Justice and the Department of Health and Human Services on how to improve the Nation's response to violence against women, with a specific focus on successful interventions with children and teens who witness and/or are victimized by domestic violence, dating violence, and sexual assault. The NAC brings together experts, advocates, researchers, and criminal justice professionals for the exchange of innovative ideas and the development of practical solutions to help the federal government address and prevent these serious problems. This federal advisory committee will develop recommendations for successful interventions with children and teens who witness and/or are victimized by domestic violence, dating violence, and sexual assault. The NAC members will also examine the relationship between children and teens who are witnesses to or victims of such violence and the overall public safety of communities across the country.

This is the third meeting of the NAC and will include presentations by Department of Justice staff on federal efforts to address these problems, presentations and facilitated discussions on trauma-informed practice, culturally based practice, and evidence based vs. evidence informed practice as well as facilitated discussions of the goals for the NAC. The Director of the Office on Violence Against Women, the Honorable Susan B. Carbon, serves as the Designated Federal Official of the NAC. Lori Crowder will serve as a facilitator at this meeting.

The NAC is also welcoming public oral comment at this meeting and has reserved an estimated 30 minutes for this purpose. Time will be reserved for public comment on September 13 at 4:30 p.m. and on September 14 at 12 p.m. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space available basis and for security reasons is required. All members of the public who wish to attend must register in advance of the meeting by September 6, 2011 by contacting Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; e-mail: *Catherine.poston@usdoj.gov;* or fax: (202) 305–2589. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the start of the meeting.

All members of the press who wish to attend and/or record any part of the meeting must register in advance of the meeting by September 6, 2011 by contacting Joan LaRocca, Public Affairs Specialist, Office on Violence Against

Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 307–6873; *e-mail: Joan.LaRocca@usdoj.gov.* All members of the press are required to sign in at the meeting registration desk and must present government-issued photo I.D. (such as a driver's license) as well as valid media credentials. Please allow extra time prior to the start of the meeting for registering.

The meeting site is accessible to individuals with disabilities. Individuals who require special accommodation in order to attend the meeting should notify Catherine Poston no later than September 6, 2011.

Written Comments: Interested parties are invited to submit written comments by September 6, 2011 to Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; *e-mail: Catherine.poston@usdoj.gov;* or *fax:* (202) 305–2589.

Public Comment: Persons interested in participating during the public comment periods of the meeting are requested to reserve time on the agenda by contacting Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; *e-mail: Catherine.poston@usdoj.gov;* or *fax:* (202) 305–2589. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the subject of the comments and should be made by September 6, 2011. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit written copies of their comments. Comments that are submitted to Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; *e-mail: Catherine.poston@usdoj.gov;* or *fax:* (202) 305–2589 will be circulated to NAC members prior to the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meeting are encouraged to submit written comments, which will be accepted at the meeting location or may be mailed to the NAC, to the attention of Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; *e-mail: Catherine.poston@usdoj.gov;* or *fax:* (202) 305–2589.

Dated: August 17, 2011.

Bea Hanson,

Principal Deputy Director, Office on Violence Against Women.

[FR Doc. 2011–21570 Filed 8–23–11; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Regal Beloit Corp. and A.O. Smith Corp.; 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, Hold Separate 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. *Regal Beloit Corporation. and A.O. Smith Corporation.*, Civil Action No. 1:11–cv–01487. On August 17, 2011, the United States filed a Complaint alleging that the proposed acquisition by Regal Beloit Corporation ("RBC") of the electric motor business of A.O. Smith Corporation ("AOS") 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 RBC to divest assets relating to its electric motors for pool pumps and spa pumps, including certain tangible and intangible assets associated with these motors. The proposed Final Judgment requires that the pool pump and spa pump motor assets be sold to SNTech, Inc. The proposed Final Judgment also requires RBC to divest the assets AOS has been using in its effort to enter the market for draft inducers used in furnaces having a thermal efficiency of 90 percent or greater, including the tangible and intangible assets associated with AOS's efforts. The proposed Final Judgment requires that the draft inducer assets be sold to Revcor, Inc.

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 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 Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: (202) 307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *Regal Beloit Corporation, 200 State Street, Beloit, Wisconsin 53511,* and *A.O. Smith Corporation, 11270 West Park Place, Suite 170, Milwaukee, Wisconsin 53224,* Defendants.

Case: 1:11–cv–01487.
Assigned To: Huvelle, Ellen S.
Assign. Date: 8/17/2011.
Description: Antitrust.

Complaint

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Regal Beloit Corporation ("RBC") and A.O. Smith Corporation ("AOS") to enjoin RBC's proposed acquisition of the electric motor business from AOS. The United States complains and alleges as follows:

I. Nature of the Action

1. On December 12, 2010, RBC entered into an agreement to acquire the electric motor business from AOS. This business involves the manufacture and sale of numerous types of motors, among other related products. The transaction is valued at approximately $875 million and includes $700 million in cash and 2.83 million shares of RBC common stock, currently valued at approximately $175 million.

2. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the markets for electric motors for pool pumps and electric motors for spa pumps in the United States. RBC and AOS are two of the three leading

suppliers of these products in the United States. Combined, RBC and AOS would supply approximately 85 percent of the U.S. market for electric motors for pool pumps. In addition, combined, RBC and AOS would supply well over half of the U.S. market for electric motors for spa pumps. For some customers of electric motors for pool pumps and electric motors for spa pumps, AOS and RBC are the two best sources of supply.

3. In addition, RBC's proposed acquisition of the electric motor business from AOS would eliminate the actual potential competition from AOS in the market for draft inducers used in high-efficiency furnaces in the United States. RBC is currently the only supplier of these draft inducers in the United States. AOS has the means and is likely to enter this market. AOS also is a uniquely well-positioned entrant. It is likely that AOS's entry into this market would produce procompetitive effects.

4. The elimination of the competition between RBC and AOS likely would result in RBC's ability profitably to unilaterally raise prices of electric motors for pool pumps and electric motors for spa pumps to customers in the United States. The proposed acquisition also likely would reduce RBC's incentive to invest in innovations for these products.

5. Further, the elimination of AOS as a potential competitor of draft inducers for high-efficiency furnaces in the United States likely would result in RBC's ability to continue its monopoly without the threat of a potential entrant.

6. As a result, the proposed acquisition likely would substantially lessen competition in the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The acquisition also would eliminate the potential competition between RBC and AOS for draft inducers for high-efficiency furnaces in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

7. RBC is incorporated in Wisconsin and has its headquarters in Beloit, Wisconsin. RBC is a manufacturer of mechanical and electrical motion control and power generation products. In 2010, RBC had revenues of approximately $2.2 billion, primarily from its electric products.

8. AOS is incorporated in Delaware and has its headquarters in Milwaukee, Wisconsin. AOS comprises two operating units: the water products business and the electric motor business. AOS is one of North America's largest manufacturers of electric motors for residential and commercial applications. In 2010, AOS had revenues of approximately $1.5 billion, with approximately $700 million of that amount from electric motors and related products.

III. Jurisdiction and Venue

9. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. Defendants develop, manufacture, and sell electric motors for pool pumps and electric motors for spa pumps and other products in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

IV. Electric Motors for Pool Pumps and Spa Pumps

A. Background

12. Electric motors come in a broad range of sizes, horsepower ratings, and end-use segments. Standard frame sizes are determined by both common practice and the National Electrical Mechanical Association. While there is a great deal of overlap between motor size and horsepower, in general, as size increases, horsepower does as well.

13. The smallest electric motors, which generally range in horsepower from 1/400 to one-half, are called subfractional motors. Slightly larger electric motors, which generally range in horsepower from one-half horsepower to five horsepower, are called fractional motors. In addition to variations in frame and horsepower sizes, electric motors are often customized for specific end-use applications. End-use categories include water pumps, with specific applications for pumping well water and wastewater, as well as for use in pools and spas; heating, ventilation, air conditioning, and refrigeration, with specific applications in air conditioning compressors, fans, furnaces, and blowers; and general commercial uses, with such diverse applications as garage door openers and exercise machines.

14. For a number of years, manufacturers have been developing more efficient electric motors. One of the most innovative technologies being utilized and continually improved for higher energy efficiency is variable speed technology, which enables the motor to switch between several speeds, sometimes using integrated electronics and permanent magnet technology, thereby allowing the motor to run more efficiently.

15. Motors sold for use in pool pumps and spa pumps must be uniquely engineered and assembled to meet the size and performance specifications of the individual pump. In addition to size and energy efficiency, specification variables include the capacity of the impeller, the speed, the current/voltage, whether the motor is operated continually or sporadically, and whether the pump has more than one speed of operation.

16. In light of government regulations, energy costs, and environmental concerns, more energy-efficient motors, including variable speed motors, are increasingly demanded for pool and spa applications. For example, California recently enacted legislation pertaining to the energy efficiency of pool pumps and spa pumps. Even without such legislation, energy-efficient motors are becoming more popular because they use less electricity and, therefore, are less costly to operate. Energy-efficient pump motors also produce less noise than standard induction pump motors. Pool pumps are an excellent application for the innovative, more energy-efficient motors because pool pumps typically run for many hours a day, sometimes even continuously. Pool pumps are therefore expected to be a high growth area for more energy-efficient electric motors.

17. All electric motors must pass Underwriters Laboratories ("UL") certification. UL has established safety standards specifically for all electric motors for pool pumps and all electric motors for spa pumps. For example, electric motors for pool pumps and electric motors for spa pumps are the only pump motors that are required to have a ground bonding lug on the outside of the pump, assuring that the pump is electrically grounded.

18. Electric motors for pool pumps and electric motors for spa pumps are purchased by manufacturers of pool pumps and spa pumps. Electric motors for pool pumps and electric motors for spa pumps are also sold as replacements or upgrades in the aftermarket through

the pump manufacturers and distributors.

B. Relevant Markets

1. Electric Motors for Pool Pumps

a. Product Market

19. Electric motors for pool pumps have specific applications, for which other types of pumps cannot be employed. Motors for use in other types of pumps, such as sump pumps and spa pumps, cannot be used in pool pumps because each pump is specifically designed for a particular application and the motor is then specifically designed for each pump type. The motors for the different types of pumps also have different performance characteristics. A customer who requires a motor for a pool pump cannot substitute a motor for a spa pump, sump pump, or jetted tub pump, or any other kind of motor.

20. A small but significant increase in the price of electric motors for pool pumps would not cause customers of those motors to substitute a different kind of motor or other product or reduce purchases of electric motors for pool pumps in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of electric motors for pool pumps is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

b. Geographic Market

21. Although electric motors for pool pumps may be manufactured outside the United States, U.S. purchasers can use only those motors designed for use in the United States. These motors must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications, such as UL certification.

22. Manufacturers of electric motors for pool pumps typically deliver the motors to their customers' locations. Most customers that purchase motors for pool pumps for use in the United States are located in the United States.

23. Major U.S. customers of electric motors for pool pumps consider only those manufacturers with a substantial U.S. presence, including sales, technical, and support personnel. U.S. customers prefer localized experience, inventory, technical support, and warranty assistance, as well as detailed knowledge of the U.S. market and products designed to meet U.S. requirements.

24. A small but significant increase in the price of electric motors for pool pumps intended for use in the United States would not cause a sufficient number of U.S. customers to turn to manufacturers of those motors that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

2. Electric Motors for Spa Pumps

a. Product Market

25. Electric motors for spa pumps have specific applications, for which other types of pumps cannot be employed. Motors for use in other types of pumps, such as sump pumps and pool pumps, cannot be used in spa pumps because each pump is specifically designed for a particular application and the motor is then specifically designed for each pump type. The motors for the different types of pumps also have different performance characteristics. A customer who requires a motor for a spa pump cannot substitute a motor for a pool pump, sump pump, or jetted tub pump, or any other kind of motor.

26. A small but significant increase in the price of electric motors for spa pumps would not cause customers of those motors to substitute a different kind of motor or other product or reduce purchases of electric motors for spa pumps in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of electric motors for spa pumps is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

b. Geographic Market

27. Electric motors for spa pumps may be manufactured outside the United States; however, these motors must be customized for use in the United States and must comply with distinct U.S. technical specifications, such as UL certification.

28. Manufacturers of electric motors for spa pumps typically deliver the motors to their customers' locations. Most customers that purchase motors for spa pumps for use in the United States are located in the United States.

29. Most U.S. customers of electric motors for spa pumps prefer manufacturers with a substantial U.S. presence, including sales, technical, and support personnel. U.S. customers prefer localized experience, inventory, technical support, and warranty assistance, as well as detailed knowledge of the U.S. market and products designed to meet U.S. requirements.

30. A small but significant increase in the price of electric motors for spa pumps intended for use in the United States would not cause a sufficient number of U.S. customers to turn to manufacturers of these motors that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Acquisition

1. Electric Motors for Pool Pumps

31. AOS, RBC, and one other company are the only significant competitors that sell electric motors for pool pumps in the United States. Currently, AOS and RBC sell approximately 76 and nine percent, respectively, of electric motors for pool pumps in the United States. The third competitor accounts for most of the remaining sales in this market.

32. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the U.S. market for electric motors for pool pumps. If the acquisition is not enjoined, the combined firm would supply approximately 85 percent of the electric motors for pool pumps in the United States. The Herfindahl-Hirschman Index ("HHI") (explained in Appendix A) is a measure of market concentration. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that cause an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice and the Federal Trade Commission. Following RBC's acquisition of the electric motor business of AOS, the HHI would increase from approximately 6,000 points to more than 7,500 points.

33. AOS's and RBC's bidding behavior often has been constrained by the possibility of losing sales of electric motors for pool pumps to the other. For many customers of electric motors for pool pumps, AOS and RBC are the two best sources.

34. Customers have benefited from the competition between AOS and RBC for sales of electric motors for pool pumps by receiving lower prices. In addition, AOS and RBC have competed vigorously by providing innovations that have resulted in higher-quality and more energy-efficient motors. For example, AOS and RBC have competed for the development and sale of more energy-efficient motors for pool pumps. The third competitor is behind AOS and RBC in developing this energy-efficient

technology. Further, AOS and RBC compete based on the level of service they provide to their customers. The combination of AOS and RBC would eliminate this competition and its future benefits to customers. Post-acquisition, RBC likely would have the incentive and gain the ability to profitably increase prices, reduce quality, reduce innovation, and provide less customer service.

35. The response of the only other significant competitor in the United States for electric motors for pool pumps would not be sufficient to constrain a unilateral exercise of market power by RBC post-acquisition. RBC would be aware that many customers strongly prefer it as a supplier, allowing it profitably to raise prices above pre-acquisition levels.

36. The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, manufacture, and sale of electric motors for pool pumps. This likely would lead to higher prices, lower quality, less customer service, and less innovation in violation of Section 7 of the Clayton Act.

2. Electric Motors for Spa Pumps

37. AOS, RBC, and one other company are the only significant competitors that sell electric motors for spa pumps in the United States. Currently, AOS and RBC each sell a substantial portion of the electric motors for spa pumps in the United States. The third competitor accounts for most of the remaining sales in this market.

38. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the U.S. market for electric motors for spa pumps. If the acquisition is not enjoined, the combined firm would supply well over half of the electric motors for spa pumps in the United States.

39. AOS's and RBC's bidding behavior often has been constrained by the possibility of losing sales of electric motors for spa pumps to the other. For many customers of motors for spa pumps, AOS and RBC are the two best sources.

40. Customers have benefited from the competition between AOS and RBC for sales of electric motors for spa pumps by receiving lower prices. In addition, AOS and RBC have competed vigorously by providing innovations that have resulted in higher-quality motors. The combination of AOS and RBC would eliminate this competition and its future benefits to customers. Post-acquisition, RBC likely would have the incentive and gain the ability to profitably increase prices, reduce quality, reduce innovation, and provide less customer service.

41. The response of the only other significant competitor in the United States for electric motors for spa pumps would not be sufficient to constrain a unilateral exercise of market power by RBC post-acquisition. RBC would be aware that many customers strongly prefer it as a supplier, allowing it profitably to raise prices above pre-acquisition levels.

42. The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, manufacture, and sale of electric motors for spa pumps. This likely would lead to higher prices, lower quality, less customer service, and less innovation in violation of Section 7 of the Clayton Act.

D. Difficulty of Entry

43. Sufficient, timely entry of additional competitors into the markets for electric motors for pool pumps and electric motors for spa pumps in the United States is unlikely. Therefore, entry or the threat of entry into this market will not prevent the harm to competition caused by the elimination of AOS as a supplier of these products.

44. Firms attempting to enter into the U.S. market for the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps face several barriers to entry. First, establishing a reputation for successful performance and gaining customer confidence are important and may require many years and substantial sunk costs. Because end users rely on these motors to perform a critical function in their pool pumps and spa pumps, they are reluctant to purchase a product from a supplier not already known for its expertise in electric motors for pool pumps and electric motors for spa pumps, or at least in fractional electric motors.

45. Second, entry into the markets for electric motors for pool pumps and electric motors for spa pumps could take years. A new supplier must demonstrate to potential customers that its motors can meet the customers' particular design specifications as well as their rigorous quality and performance standards. Because each customer may have many different specifications for the motors, the period for qualification can take up to twelve months with no guarantee of success. This period does not include the time necessary to obtain UL certification, which may take up to six months. Further, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

46. Third, the technology and expertise involved in developing and producing electric motors for pool pumps and electric motors for spa pumps is another barrier to entry. A new supplier would need to construct production lines capable of manufacturing motors for pool pumps and motors for spa pumps that meet the standards of potential customers. In addition, the technical know-how necessary to design and successfully manufacture such motors is difficult to obtain. Even incumbent manufacturers of fractional electric motors, with all their expertise and technical know-how, require substantial time and expense for engineering, tooling, and testing a new motor before it can be sold. A new entrant must also be committed to investing in research and development to meet the customers' ongoing desire for innovation, including more energy-efficient motors.

47. Finally, U.S. customers prefer suppliers that have a substantial U.S. presence, which can require a significant investment in time and money. Given the low volumes of motors needed by manufacturers of pool pumps and spa pumps, new entrants are unlikely to invest in establishing the personnel, inventory, and distribution presence required to compete effectively in the United States.

48. As a result of these barriers, entry into the markets for electric motors for pool pumps and electric motors for spa pumps in the United States would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from RBC's acquisition of AOS's electric motor business.

V. Draft Inducers for High-Efficiency Furnaces

A. Background

49. Gas-fired furnaces require the movement of air and the expulsion of hot combustion gases. Blowers move the air through ducts and circulate it around a building. Furnace draft inducers are specialized blowers, which perform an important safety function by extracting harmful combustion gases such as carbon monoxide, and venting those gases outside. Furnace draft inducers must meet federal regulatory standards for safety and energy efficiency.

50. Furnace draft inducers consist of a housing containing a blower wheel and a motor. Furnace draft inducers are distinguished from circulation blowers by the shape of the housing, the need for safety devices to ensure gas is extracted,

and the design of the motor mounting on the blower assembly, among other design features. The shapes of the housing and fan blades are among the more difficult design aspects of furnace draft inducers.

51. Furnaces are classified according to their thermal efficiency, which is the percentage of energy that is used to heat the air and that is not lost with the vented combustion gases. Draft inducers are designed for the specific thermal efficiency of each furnace. Less efficient furnaces, typically referred to as 80 percent thermal efficiency or 80+, use draft inducers that employ an older technology that has been utilized for forty years. More modern furnaces with higher thermal efficiency, typically referred to as 90 percent thermal efficiency or 90+, use draft inducers based on newer, more advanced technology.

52. Draft inducers for furnaces with 80 percent thermal efficiency (hereafter referred to as "80+ draft inducers") are used in non-condensing furnaces. Non-condensing furnaces do not need the draft inducer to drain condensation. 80+ draft inducers are generally simpler and easier to design than draft inducers for furnaces with a 90 percent or greater thermal efficiency (hereafter referred to as "90+ draft inducers") because they have a single inlet, a sheet metal housing that is easily available, and a narrow, forward-curved wheel.

53. 90+ draft inducers are used in condensing furnaces. Condensing furnaces take so much heat out of the combusted gases (that is, turn so much of the combustion energy into heat that is circulated) that condensation forms in the draft inducer. This necessitates a draft inducer with a plastic housing that is made from polycarbonate material, rather than metal, which can corrode, and a drain for the condensation. 90+ draft inducers also contain a more technically complicated "swirl fan" and backward-curved wheel, which is inclined for greater efficiency and noise reduction. 90+ draft inducers are priced significantly higher than 80+ draft inducers.

54. Currently, sales of 90+ draft inducers represent the majority of the draft inducer sales in the United States. Usage of 90+ draft inducers is likely to increase as federal regulations requiring the use of more energy-efficient products likely will lead to the removal of furnaces with 80 percent thermal efficiency from the market.

B. Relevant Markets

1. Product Market

55. 90+ draft inducers have specific applications, for which other products cannot be employed. Every furnace needs a draft inducer, and no product other than a draft inducer can extract the harmful combustion gases from the furnace and safely vent them. In addition, 80+ draft inducers, or other draft inducers designed for less efficient furnaces, cannot be substituted for a 90+ draft inducer. Draft inducers for less efficient furnaces will not work with a furnace with 90 percent thermal efficiency.

56. Draft inducers are also used to vent hazardous gases created in other gas appliances. Although performing a similar function as furnace draft inducers, the frame shape, wheel design, motor, and other design features of a draft inducer intended for another appliance are sufficiently distinct that they cannot be used in a furnace.

57. A small but significant increase in the price of 90+ draft inducers would not cause customers of 90+ draft inducers to substitute a lower-efficiency draft inducer, such as an 80+ draft inducer, or another product or to reduce purchases of 90+ draft inducers in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of 90+ draft inducers is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

2. Geographic Market

58. 90+ draft inducers sold in the United States must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications and certification requirements.

59. Manufacturers of 90+ draft inducers typically deliver the products to their customers' locations. 90+ draft inducers are used only in the United States and Canada. Customers that purchase 90+ draft inducers for use in the United States are located in the United States.

60. Major U.S. customers of 90+ draft inducers consider only those manufacturers with a significant understanding of heating systems in the United States. Those manufacturers all have a substantial presence in the United States, including sales, technical, and support personnel. U.S. customers also prefer localized experience, inventory, and technical support, as well as detailed knowledge of the U.S. market.

61. A small but significant increase in the price of 90+ draft inducers would not cause a sufficient number of customers in the United States to turn to manufacturers of 90+ draft inducers without a presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Acquisition

62. For the past several years, RBC has been the only firm selling 90+ draft inducers in the United States. Furnace manufacturers have attempted to find alternative sources for 90+ draft inducers. For at least one year, AOS has been attempting to enter the U.S. market for 90+ draft inducers. AOS has the means to enter this market and has advantages over other manufacturers that make it a particularly strong and likely entrant.

63. While AOS is not currently manufacturing and selling 90+ draft inducers, it is one of the few manufacturers in the United States that likely would have the ability to enter the 90+ draft inducer market. RBC and AOS are the only manufacturers of water heater draft inducers in the United States. While water heater draft inducers are distinct from 90+ draft inducers, AOS's technology, experience, and know-how relating to the development of water heater draft inducers provided AOS with some technical knowledge necessary to begin developing a 90+ draft inducer that would not infringe numerous RBC patents relating to the 90+ draft inducer. Until the announcement of RBC's proposed acquisition of the electric motor business of AOS, AOS engaged in 90+ draft inducer development projects with three furnace manufacturers and had sent samples of its product to one of these manufacturers. These furnace manufacturers viewed AOS as presenting the only opportunity to develop an alternative to RBC for 90+ draft inducers. Accordingly, AOS was the firm best positioned to challenge RBC's dominance in the 90+ draft inducer market in the United States.

64. One company that sells 80+ draft inducers to U.S. customers is attempting to develop a 90+ draft inducer. However, its efforts have been unsuccessful and most furnace manufacturers do not consider this company to be close to success in developing a 90+ draft inducer.

65. AOS's entry into the U.S. market for 90+ draft inducers likely would have benefited customers with lower prices, more innovation, and more favorable terms of service. AOS may have become

an alternative to RBC for the supply of 90+ draft inducers. RBC's acquisition of the electric motor business of AOS would prevent AOS's entry and, therefore, substantially lessen competition in the market for 90+ draft inducers, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

D. Difficulty of Entry

66. Sufficient, timely entry of additional competitors into the market for 90+ draft inducers in the United States is unlikely. Therefore, entry or the threat of entry into this market is not likely to prevent the harm to competition caused by the elimination of AOS as a potential supplier of 90+ draft inducers.

67. Firms attempting to enter the U.S. market for the development, manufacture, and sale of 90+ draft inducers face several barriers to entry. First, a new supplier of 90+ draft inducers must be certified as a supplier by the furnace manufacturer and must work with that manufacturer to customize the draft inducer specifically for the manufacturer's furnace. This is a rigorous and lengthy process, often involving many redesigns of the product, and can take two years or longer. This process involves, among other things, reaching an agreement by the furnace manufacturer and the draft inducer supplier on the specifications for the draft inducer, the design of the draft inducer and each subcomponent to meet these specifications, and the laboratory and field testing of the subcomponents and the assembled 90+ draft inducer.

68. Second, draft inducer suppliers must have an established reputation for the reliability of their products and the capacity to timely supply them in sufficient quantities. Because draft inducers perform a critical function in the furnace, furnace manufacturers are reluctant to purchase a product from a supplier that is not already known for its expertise in the product area.

69. Third, a firm attempting to develop a 90+ draft inducer must have the technology and know-how to design a draft inducer that avoids infringing on the numerous RBC patents relating to 90+ draft inducers. Those few motor or blower manufacturers in the heating industry that have reputations for quality products and the capacity to supply motors, blowers, and other heating system components have experienced difficulties in their attempts to develop a 90+ draft inducer that would be competitive in price, quality, and the capacity to supply them.

70. As a result of these barriers, entry into the market for 90+ draft inducers in the United States would not be timely, likely, or sufficient to defeat the substantial lessening of competition that would result from RBC's acquisition of AOS's electric motor business.

VI. Violations Alleged

71. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the development, manufacture, and sale of electric motors for pool pumps, electric motors for spa pumps, and 90+ draft inducers in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

72. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects, among others:

(a) Actual and potential competition between RBC and AOS in the markets for the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps in the United States would be eliminated;

(b) Competition in the markets for the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps in the United States likely would be substantially lessened;

(c) For electric motors for pool pumps and electric motors for spa pumps in the United States, prices likely would increase and quality, customer service, and innovation likely would decrease;

(d) Potential competition between RBC and AOS in the market for 90+ draft inducers in the United States would be eliminated; and

(e) Prices for 90+ draft inducers in the United States likely would remain higher than they would be in a market with more than one competitor.

VII. Requested Relief

73. The United States requests that this Court:

(a) Adjudge and decree that RBC's acquisition of the electric motor business from AOS would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed acquisition of the AOS electric motor business by RBC, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine RBC with the electric motor business of AOS;

(c) Award the United States its costs for this action; and

(d) Award the United States such other and further relief as the Court deems just and proper.

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Dated: August 17, 2011.

Appendix A

Definition of HHI

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 Horizontal Merger Guidelines* § 5.3 (issued by the U.S. Department of Justice and the Federal Trade Commission on Aug. 19, 2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets will be presumed likely to enhance market power. *Id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Regal Beloit Corporation*, and *A.O. Smith Corporation*, Defendants.

Case: 1:11–cv–01487.

Assigned To: Huvelle, Ellen S.
Assign. Date: 8/17/2011.
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

Defendants Regal Beloit Corporation ("RBC") and A.O. Smith Corporation ("AOS") entered into an Asset and Stock Purchase Agreement, dated December 12, 2010. Pursuant to this agreement, RBC proposes to acquire AOS's electric motor business, which involves the manufacture and sale of numerous types of motors, among other related products. The transaction is valued at approximately $875 million.

The United States filed a civil antitrust Complaint on August 17, 2011, seeking to enjoin the proposed acquisition, alleging that it likely would substantially lessen competition in three separate product markets—electric motors for pool pumps, electric motors for spa pumps, and draft inducers for furnaces having a thermal efficiency of 90 percent or higher (hereafter referred to as "90+ draft inducers")—in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. For most U.S. customers, RBC and AOS are two of the three leading suppliers of electric motors for pool pumps and electric motors for spa pumps in the United States. The loss of competition from the acquisition likely would result in RBC's ability unilaterally to raise prices of electric motors for pool pumps and electric motors for spa pumps and would reduce RBC's incentive to invest in innovations for those products. In addition, RBC is the only supplier of 90+ draft inducers in the United States, and AOS is the only company likely to enter this market. The elimination of actual potential competition between RBC and AOS likely would result in RBC's ability to continue its monopoly without the threat of a potential entrant.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects that would result from RBC's acquisition of AOS's electric motor business. Under the proposed Final Judgment, which is explained more fully below, RBC is required to divest assets relating to its electric motors for pool pumps and electric motors for spa pumps, as well as the assets AOS has been using in its effort to enter the market for 90+ draft inducers. Under the terms of the Hold Separate, RBC will keep its own assets entirely separate from the assets it acquires from AOS until the required divestitures take place. Pursuant to the Hold Separate, RBC and AOS also must take certain steps to ensure that the assets being divested continue to be operated in a competitively and economically viable manner and that competition for the products being divested is maintained during the pendency of the divestiture.

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 Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations

A. The Defendants

RBC is incorporated in Wisconsin and has its headquarters in Beloit, Wisconsin. RBC is a manufacturer of mechanical and electrical motion control and power generation products. In 2010, RBC had revenues of approximately $2.2 billion, primarily from its electric products.

AOS is incorporated in Delaware and has its headquarters in Milwaukee, Wisconsin. AOS comprises two operating units: The water products business and the electric motor business. AOS is one of North America's largest manufacturers of electric motors for residential and commercial applications. In 2010, AOS had revenues of approximately $1.5 billion, with approximately $700 million of that amount from electric motors and related products.

B. Anticompetitive Effects in the U.S. Markets for Electric Motors for Pool Pumps and Electric Motors for Spa Pumps

(1) Electric Motors for Pool Pumps and Spa Pumps

Electric motors come in a broad range of sizes, horsepower ratings, and end-use segments. Standard frame sizes are determined by both common practice and the National Electrical Mechanical Association. While there is a great deal of overlap between motor size and horsepower, in general, as size increases, horsepower does as well. The smallest electric motors, which generally range in horsepower from 1/400 to one-half, are called subfractional motors. Slightly larger electric motors, which generally range in horsepower from one-half horsepower to five horsepower, are called fractional motors. In addition to variations in frame and horsepower sizes, electric motors are often customized for specific end-use applications. End-use categories include water pumps, with specific applications for pumping well water and wastewater, as well as for use in pools and spas; heating, ventilation, air conditioning, and refrigeration, with specific applications in air conditioning compressors, fans, furnaces, and blowers; and general commercial uses, with such diverse applications as garage door openers and exercise machines.

For a number of years, manufacturers have been developing more efficient electric motors. One of the most innovative technologies being utilized and continually improved for higher energy efficiency is variable speed technology, which enables the motor to switch between several speeds, sometimes using integrated electronics and permanent magnet technology, thereby allowing the motor to run more efficiently.

Motors sold for use in pool pumps and spa pumps must be uniquely engineered and assembled to meet the size and performance specifications of the individual pump. In addition to size and energy efficiency, specification variables include the capacity of the impeller, the speed, the current/voltage, whether the motor is operated continually or sporadically, and whether the pump has more than one speed of operation.

In light of government regulations, energy costs, and environmental concerns, more energy-efficient motors, including variable speed motors, are increasingly demanded for pool and spa applications. For example, California recently enacted legislation pertaining to the energy efficiency of pool pumps and spa pumps. Even without such legislation, energy-efficient motors are becoming more popular because they use less electricity and, therefore, are less costly to operate. Energy-efficient pump motors also produce less noise than standard induction pump motors. Pool pumps are an excellent application for the innovative, more energy-efficient motors because pool pumps typically run for many hours a day, sometimes even continuously. Pool pumps are therefore expected to be a high growth

area for more energy-efficient electric motors.

All electric motors must pass Underwriters Laboratories ("UL") certification. UL has established safety standards specifically for all electric motors for pool pumps and all electric motors for spa pumps. For example, electric motors for pool pumps and motors for spa pumps are the only pump motors that are required to have a ground bonding lug on the outside of the pump, assuring that the pump is electrically grounded.

Electric motors for pool pumps and motors for spa pumps are purchased by manufacturers of pool pumps and spa pumps. Electric motors for pool pumps and motors for spa pumps are also sold as replacements or upgrades in the aftermarket through the pump manufacturers and distributors.

(2) The U.S. Market for Electric Motors for Pool Pumps

Electric motors for pool pumps have specific applications, for which other types of pumps cannot be employed. Motors for use in other types of pumps, such as sump pumps and spa pumps, cannot be used in pool pumps because each pump is specifically designed for a particular application and the motor is then specifically designed for each pump type. The motors for the different types of pumps also have different performance characteristics. A customer who requires a motor for a pool pump cannot substitute a motor for a spa pump, sump pump, or jetted tub pump, or any other kind of motor.

A small but significant increase in the price of electric motors for pool pumps would not cause customers of those motors to substitute a different kind of motor or other product or reduce purchases of electric motors for pool pumps in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of electric motors for pool pumps is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

Although electric motors for pool pumps may be manufactured outside the United States, U.S. purchasers can use only those motors designed for use in the United States. These motors must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications, such as UL certification. Manufacturers of electric motors for pool pumps typically deliver the motors to their customers' locations. Most customers that purchase motors for pool pumps for use in the United States are located in the United States. Major U.S. customers of electric motors for pool pumps consider only those manufacturers with a substantial U.S. presence, including sales, technical, and support personnel. U.S. customers prefer localized experience, inventory, technical support, and warranty assistance, as well as detailed knowledge of the U.S. market and products designed to meet U.S. requirements.

A small but significant increase in the price of electric motors for pool pumps intended for use in the United States would not cause a sufficient number of U.S. customers to turn to manufacturers of those motors that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

(3) The U.S. Market for Electric Motors for Spa Pumps

Electric motors for spa pumps also have specific applications, for which other types of pumps cannot be employed. Motors for use in other types of pumps, such as sump pumps and pool pumps, cannot be used in spa pumps because each pump is specifically designed for a particular application and the motor is then specifically designed for each pump type. The motors for the different types of pumps also have different performance characteristics. A customer who requires a motor for a spa pump cannot substitute a motor for a pool pump, sump pump, or jetted tub pump, or any other kind of motor.

A small but significant increase in the price of electric motors for spa pumps would not cause customers of those motors to substitute a different kind of motor or other product or reduce purchases of electric motors for spa pumps in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of electric motors for spa pumps is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

Electric motors for spa pumps may be manufactured outside the United States; however, these motors must be customized for use in the United States and must comply with distinct U.S. technical specifications, such as UL certification. Manufacturers of electric motors for spa pumps typically deliver the motors to their customers' locations. Most customers that purchase motors for spa pumps for use in the United States are located in the United States. Most U.S. customers of electric motors for spa pumps prefer manufacturers with a substantial U.S. presence, including sales, technical, and support personnel. U.S. customers prefer localized experience, inventory, technical support, and warranty assistance, as well as detailed knowledge of the U.S. market and products designed to meet U.S. requirements.

A small but significant increase in the price of electric motors for spa pumps intended for use in the United States would not cause a sufficient number of U.S. customers to turn to manufacturers of these motors that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

(4) Anticompetitive Effects

(a) Electric Motors for Pool Pumps

AOS, RBC, and one other company are the only significant competitors that sell electric motors for pool pumps in the United States. Currently, AOS and RBC sell approximately 76 and nine percent, respectively, of electric motors for pool pumps in the United States. The third competitor accounts for most of the remaining sales in this market. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the U.S. market for electric motors for pool pumps. If the acquisition is not enjoined, the combined firm would supply approximately 85 percent of the electric motors for pool pumps in the United States. The Herfindahl-Hirschman Index ("HHI") is a measure of market concentration. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that cause an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice and the Federal Trade Commission. Following RBC's acquisition of the electric motor business of AOS, the HHI would increase from approximately 6,000 points to more than 7,500 points.

AOS's and RBC's bidding behavior often has been constrained by the possibility of losing sales of electric motors for pool pumps to the other. For many customers of electric motors for pool pumps, AOS and RBC are the two best sources. Customers have benefited from the competition between AOS and RBC for sales of electric motors for pool pumps by receiving lower prices. In addition, AOS and RBC have competed vigorously by providing innovations

that have resulted in higher-quality and more energy-efficient motors. For example, AOS and RBC have competed for the development and sale of more energy-efficient motors for pool pumps. The third competitor is behind AOS and RBC in developing this energy-efficient technology. Further, AOS and RBC compete based on the level of service they provide to their customers. The combination of AOS and RBC would eliminate this competition and its future benefits to customers. Post-acquisition, RBC likely would have the incentive and gain the ability to profitably increase prices, reduce quality, reduce innovation, and provide less customer service.

The response of the only other significant competitor in the United States for electric motors for pool pumps would not be sufficient to constrain a unilateral exercise of market power by RBC post-acquisition. RBC would be aware that many customers strongly prefer it as a supplier, allowing it profitably to raise prices above pre-acquisition levels.

The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, manufacture, and sale of electric motors for pool pumps. This likely would lead to higher prices, lower quality, less customer service, and less innovation in violation of Section 7 of the Clayton Act.

(b) Electric Motors for Spa Pumps

AOS, RBC, and one other company are the only significant competitors that sell electric motors for spa pumps in the United States. Currently, AOS and RBC each sell a substantial portion of the electric motors for spa pumps in the United States. The third competitor accounts for most of the remaining sales in this market. RBC's proposed acquisition of the electric motor business from AOS likely would substantially lessen competition in the U.S. market for electric motors for spa pumps. If the acquisition is not enjoined, the combined firm would supply well over half of the electric motors for spa pumps in the United States.

AOS's and RBC's bidding behavior often has been constrained by the possibility of losing sales of electric motors for spa pumps to the other. For many customers of motors for spa pumps, AOS and RBC are the two best sources. Customers have benefited from the competition between AOS and RBC for sales of electric motors for spa pumps by receiving lower prices. In addition, AOS and RBC have competed vigorously by providing innovations that have resulted in higher-quality motors. The combination of AOS and RBC would eliminate this competition and its future benefits to customers. Post-acquisition, RBC likely would have the incentive and gain the ability to profitably increase prices, reduce quality, reduce innovation, and provide less customer service.

The response of the only other significant competitor in the United States for electric motors for spa pumps would not be sufficient to constrain a unilateral exercise of market power by RBC post-acquisition. RBC would be aware that many customers strongly prefer it as a supplier, allowing it profitably to raise prices above pre-acquisition levels.

The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, manufacture, and sale of electric motors for spa pumps. This likely would lead to higher prices, lower quality, less customer service, and less innovation in violation of Section 7 of the Clayton Act.

(5) Entry

Sufficient, timely entry of additional competitors into the markets for electric motors for pool pumps and electric motors for spa pumps in the United States is unlikely. Therefore, entry or the threat of entry into this market will not prevent the harm to competition caused by the elimination of AOS as a supplier of these products.

Firms attempting to enter into the U.S. market for the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps face several barriers to entry. First, establishing a reputation for successful performance and gaining customer confidence are important and may require many years and substantial sunk costs. Because end users rely on these motors to perform a critical function in their pool pumps and spa pumps, they are reluctant to purchase a product from a supplier not already known for its expertise in electric motors for pool pumps and electric motors for spa pumps, or at least in fractional electric motors.

Second, entry into the markets for electric motors for pool pumps and electric motors for spa pumps could take years. A new supplier must demonstrate to potential customers that its motors can meet the customers' particular design specifications as well as their rigorous quality and performance standards. Because each customer may have many different specifications for the motors, the period for qualification can take up to twelve months with no guarantee of success. This period does not include the time necessary to obtain UL certification, which may take up to six months. Further, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

Third, the technology and expertise involved in developing and producing electric motors for pool pumps and electric motors for spa pumps is another barrier to entry. A new supplier would need to construct production lines capable of manufacturing motors for pool pumps and motors for spa pumps that meet the standards of potential customers. In addition, the technical know-how necessary to design and successfully manufacture such motors is difficult to obtain. Even incumbent manufacturers of fractional electric motors, with all their expertise and technical know-how, require substantial time and expense for engineering, tooling, and testing a new motor before it can be sold. A new entrant must also be committed to investing in research and development to meet the customers' ongoing desire for innovation, including more energy-efficient motors.

Finally, U.S. customers prefer suppliers that have a substantial U.S. presence, which can require a significant investment in time and money. Given the low volumes of motors needed by manufacturers of pool pumps and spa pumps, new entrants are unlikely to invest in establishing the personnel, inventory, and distribution presence required to compete effectively in the United States.

As a result of these barriers, entry into the markets for electric motors for pool pumps and electric motors for spa pumps in the United States would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from RBC's acquisition of AOS's electric motor business.

C. Anticompetitive Effects of the Acquisition in the U.S. Market for 90+ Draft Inducers

(1) 90+ Draft Inducers

Gas-fired furnaces require the movement of air and the expulsion of hot combustion gases. Blowers move the air through ducts and circulate it around a building. Furnace draft inducers are specialized blowers, which perform an important safety function by extracting harmful combustion gases such as carbon monoxide, and venting those gases outside. Furnace draft inducers must meet Federal regulatory standards for safety and energy efficiency.

Furnace draft inducers consist of a housing containing a blower wheel and a motor. Furnace draft inducers are distinguished from circulation blowers by the shape of the housing, the need for safety devices to ensure gas is extracted, and the design of the motor mounting on the blower assembly, among other design features. The shapes of the housing and fan blades are among the more difficult design aspects of furnace draft inducers.

Furnaces are classified according to their thermal efficiency, which is the percentage of energy that is used to heat the air and that is not lost with the vented combustion gases. Draft inducers are designed for the specific thermal efficiency of each furnace. Less efficient furnaces, typically referred to as 80 percent thermal efficiency or 80+, use draft inducers that employ an older technology that has been utilized for forty years. More modern furnaces with higher thermal efficiency, typically referred to as 90 percent thermal efficiency or 90+, use draft inducers based on newer, more advanced technology.

Draft inducers for furnaces with 80 percent thermal efficiency (hereafter referred to as "80+ draft inducers") are used in non-condensing furnaces. Non-condensing furnaces do not need the draft inducer to drain condensation. 80+ draft inducers are generally simpler and easier to design than 90+ draft inducers because they have a single inlet, a sheet metal housing that is easily available, and a narrow, forward-curved wheel.

90+ draft inducers are used in condensing furnaces. Condensing furnaces take so much heat out of the combusted gases (that is, turn so much of the combustion energy into heat that is circulated) that condensation forms in the draft inducer. This necessitates a draft inducer with a plastic housing that is made from polycarbonate material, rather than metal, which can corrode, and a drain for the condensation. 90+ draft inducers also contain a more technically complicated "swirl fan" and backward-curved wheel, which is inclined for greater efficiency and noise reduction. 90+ draft inducers are priced significantly higher than 80+ draft inducers. Currently, sales of 90+ draft inducers represent the majority of the draft inducer sales in the United States. Usage of 90+ draft inducers is likely to increase as federal regulations requiring the use of more energy-efficient products likely will lead to the removal of furnaces with 80 percent thermal efficiency from the market.

(2) The U.S. Market for 90+ Draft Inducers

90+ draft inducers have specific applications, for which other products cannot be employed. Every furnace needs a draft inducer, and no product other than a draft inducer can extract the harmful combustion gases from the furnace and safely vent them. In addition, 80+ draft inducers, or other draft inducers designed for less efficient furnaces, cannot be substituted for a 90+ draft inducer. Draft inducers for less efficient furnaces will not work with a furnace with 90 percent thermal efficiency. Draft inducers are also used to vent hazardous gases created in other gas appliances. Although performing a similar function as furnace draft inducers, the frame shape, wheel design, motor, and other design features of a draft inducer intended for another appliance are sufficiently distinct that they cannot be used in a furnace.

A small but significant increase in the price of 90+ draft inducers would not cause customers of 90+ draft inducers to substitute a lower-efficiency draft inducer, such as an 80+ draft inducer, or another product or to reduce purchases of 90+ draft inducers in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of 90+ draft inducers is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

90+ draft inducers sold in the United States must be customized for the demands of U.S. purchasers and must comply with distinct U.S. technical specifications and certification requirements. Manufacturers of 90+ draft inducers typically deliver the products to their customers' locations. 90+ draft inducers are used only in the United States and Canada. Customers that purchase 90+ draft inducers for use in the United States are located in the United States. Major U.S. customers of 90+ draft inducers consider only those manufacturers with a significant understanding of heating systems in the United States. Those manufacturers all have a substantial presence in the United States, including sales, technical, and support personnel. U.S. customers also prefer localized experience, inventory, and technical support, as well as detailed knowledge of the U.S. market.

A small but significant increase in the price of 90+ draft inducers would not cause a sufficient number of customers in the United States to turn to manufacturers of 90+ draft inducers without a presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

(3) Anticompetitive Effects

For the past several years, RBC has been the only firm selling 90+ draft inducers in the United States. Furnace manufacturers have attempted to find alternative sources for 90+ draft inducers. For at least one year, AOS has been attempting to enter the U.S. market for 90+ draft inducers. AOS has the means to enter this market and has advantages over other manufacturers that make it a particularly strong and likely entrant.

While AOS is not currently manufacturing and selling 90+ draft inducers, it is one of the few manufacturers in the United States that likely would have the ability to enter the 90+ draft inducer market. RBC and AOS are the only manufacturers of water heater draft inducers in the United States. While water heater draft inducers are distinct from 90+ draft inducers, AOS's technology, experience, and know-how relating to the development of water heater draft inducers provided AOS with some technical knowledge necessary to begin developing a 90+ draft inducer that would not infringe numerous RBC patents relating to the 90+ draft inducer. Until the announcement of RBC's proposed acquisition of the electric motor business of AOS, AOS engaged in 90+ draft inducer development projects with three furnace manufacturers and had sent samples of its product to one of these manufacturers. These furnace manufacturers viewed AOS as presenting the only opportunity to develop an alternative to RBC for 90+ draft inducers. Accordingly, AOS was the firm best positioned to challenge RBC's dominance in the 90+ draft inducer market in the United States.

One company that sells 80+ draft inducers to U.S. customers is attempting to develop a 90+ draft inducer. However, its efforts have been unsuccessful and most furnace manufacturers do not consider this company to be close to success in developing a 90+ draft inducer.

AOS's entry into the U.S. market for 90+ draft inducers likely would have benefited customers with lower prices, more innovation, and more favorable terms of service. AOS may have become an alternative to RBC for the supply of 90+ draft inducers. RBC's acquisition of the electric motor business of AOS would prevent AOS's entry and, therefore, substantially lessen competition in the market for 90+ draft

inducers, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

(4) Entry

Sufficient, timely entry of additional competitors into the market for 90+ draft inducers in the United States is unlikely. Therefore, entry or the threat of entry into this market is not likely to prevent the harm to competition caused by the elimination of AOS as a potential supplier of 90+ draft inducers.

Firms attempting to enter the U.S. market for the development, manufacture, and sale of 90+ draft inducers face several barriers to entry. First, a new supplier of 90+ draft inducers must be certified as a supplier by the furnace manufacturer and must work with that manufacturer to customize the draft inducer specifically for the manufacturer's furnace. This is a rigorous and lengthy process, often involving many redesigns of the product, and can take two years or longer. This process involves, among other things, reaching an agreement by the furnace manufacturer and the draft inducer supplier on the specifications for the draft inducer, the design of the draft inducer and each subcomponent to meet these specifications, and the laboratory and field testing of the subcomponents and the assembled 90+ draft inducer.

Second, draft inducer suppliers must have an established reputation for the reliability of their products and the capacity to timely supply them in sufficient quantities. Because draft inducers perform a critical function in the furnace, furnace manufacturers are reluctant to purchase a product from a supplier that is not already known for its expertise in the product area.

Third, a firm attempting to develop a 90+ draft inducer must have the technology and know-how to design a draft inducer that avoids infringing on the numerous RBC patents relating to 90+ draft inducers. Those few motor or blower manufacturers in the heating industry that have reputations for quality products and the capacity to supply motors, blowers, and other heating system components have experienced difficulties in their attempts to develop a 90+ draft inducer that would be competitive in price, quality, and the capacity to supply them.

As a result of these barriers, entry into the market for 90+ draft inducers in the United States would not be timely, likely, or sufficient to defeat the substantial lessening of competition that would result from RBC's acquisition of AOS's electric motor business.

III. Explanation of the Proposed Final Judgment

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects that likely would result from RBC's acquisition of AOS's electric motor business. These divestitures will preserve the current state of competition in the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps. These divestitures will also preserve the potential competition that currently exists in the market for the design and development of 90+ draft inducers. The divestiture of the pool pump and spa pump motor assets will create an independent, economically viable competitor to RBC in the United States for electric motors for pool pumps and electric motors for spa pumps. The divestiture of the draft inducer assets will create an independent, economically viable company that can continue AOS's developmental work on the 90+ draft inducers and create the potential for competition in that market.

(A) Electric Motors for Pool Pumps and Spa Pumps

The divested pool pump and spa pump motor assets will provide the acquirer with the assets it needs to successfully develop, manufacture, and sell electric motors for pool pumps and electric motors for spa pumps in the United States. The proposed Final Judgment requires RBC to divest the assets used to design, develop, manufacture, market, service, distribute, or sell the RBC motors used in pool pump and spa pump applications, including but not limited to single-speed motors, two-speed motors, three-speed motors, the imPower motors, variable-speed motors, and electronically commutated motors. The tangible assets being divested include manufacturing equipment, tooling, dies, prototypes, drawings, bills of material, contracts, specifications, and repair and performance records. The intangible assets being divested are those assets used exclusively or primarily to design, develop, manufacture, market, service, distribute, or sell the RBC motors used in pool pump and spa pump applications, including patents, intellectual property, know-how, product designs, marketing and sales data, and *research and development efforts*. In addition, the acquirer of the pool pump and spa pump motor assets will be granted a non-exclusive, perpetual, worldwide, non-transferrable,[1] royalty-free license for any intangible assets that were used to design, develop, manufacture, market, service, distribute, or sell *any of the* RBC motors used in pool pump and spa pump applications that are being divested, but that were not used exclusively or primarily for those motors. The divestiture assets exclude certain trademarks and trade names, but the acquirer will be able to use the majority of those trademarks and trade names for one year. Finally, the divestiture assets exclude all assets used by three named RBC subsidiaries located outside the United States, *unless those assets have, prior to the time the Court signs the Hold Separate, been used to design, develop, manufacture, market, service, distribute, or sell motors that are designed or developed for use or sale in, or are otherwise intended to be used or sold in, the United States for pool pump or spa pump applications.*

The proposed Final Judgment designates SNTech, Inc. as the company to which the divested pool pump and spa pump motor assets must be sold. The United States determined, after a thorough investigation, that SNTech has the incentive and capability to develop, manufacture, and sell the pool pump and spa pump motors that are being divested. The United States does not typically require that the acquirer of the divested assets be identified and approved prior to the filing of the proposed Final Judgment. However, identifying an upfront acquirer was useful in this case because the assets being divested do not constitute a full business unit. An upfront acquirer provided the United States assurances that the divestiture assets were sufficient to make the acquirer a viable competitor and that there would be an acceptable acquirer with the means and incentive to use the divested assets to compete with RBC.[2]

The United States typically requires that assets be divested within 60 to 90 days after the filing of the Complaint or five days after the entry of the Final Judgment by the Court. Because the

[1] However, the license is transferrable to any future purchaser of substantially all of the pool pump and spa pump motor assets.

[2] The United States did not include an alternative relief proposal for the pump motor assets in the proposed Final Judgment because RBC has a binding agreement with SNTech to acquire those assets. RBC and SNTech are prepared to close their acquisition immediately after the close of RBC's acquisition of AOS's electric motor business. In addition, if a trustee must effect the divestiture of the Pump Motor Divestiture Assets, those assets would be sufficient to allow an acquirer other than SNTech to become a viable competitor in the markets for motors for pool pumps and motors for spa pumps.

acquirer of the divested assets has been approved by the United States prior to the filing of the Complaint, there is no need for time to engage in a search for an acquirer. Accordingly, the proposed Final Judgment requires that the divested assets be sold to SNTech within ten days after the Court signs the Hold Separate. The date of entry of the Hold Separate was chosen as the date upon which the divestiture period begins to run because RBC cannot consummate its acquisition of AOS's electric motor business until the Court enters the Hold Separate, and that acquisition must be consummated before the divested assets are sold.

The Hold Separate requires that until the assets being divested are sold according to the terms of the proposed Final Judgment, RBC will preserve and continue to operate its own assets and the assets it acquires from AOS as independent, ongoing, and economically viable businesses that are held entirely separate, distinct, and apart. RBC shall not coordinate the production, marketing, or terms of sale of its assets with the assets it acquires from AOS until the assets being divested are sold.

Because SNTech is purchasing equipment and other assets that must be moved and integrated into its existing operations, it will need RBC's assistance to enable it to supply the divested motors to customers as soon as the divestiture is consummated. Therefore, the proposed Final Judgment requires that RBC enter into a transition services agreement by which RBC will provide technical and engineering assistance to SNTech for one year. This agreement also requires that RBC provide sufficient assistance to permit SNTech to develop the next generation of imPower motors, referred to as the imPower 2.6 horsepower pool pump motor.

In addition, the proposed Final Judgment requires that RBC enter into a supply agreement to provide SNTech with the divested motors so that it may supply its customers prior to and while the equipment and other assets are being moved, installed, and tested. The proposed Final Judgment limits the term of this supply agreement to six months, with the possibility of extensions up to an additional six months with the United States's approval. The proposed Final Judgment further requires that RBC enter into a supply agreement to provide SNTech raw materials and components necessary to produce the divested motors. The term of this supply agreement is limited to one year, with the possibility of extensions up to an additional six months with the United States's approval. The proposed Final Judgment requires that RBC establish procedures to prevent the disclosure of certain information, including quantities and pricing, about SNTech's purchases under the supply agreements to any RBC employee responsible for marketing, distributing, or selling electric motors for pool pumps or spa pumps in competition with SNTech. The proposed Final Judgment requires RBC to submit its proposed procedures to the United States for its approval or rejection.

Finally, the proposed Final Judgment contains a provision that ensures that RBC will not compete directly or indirectly with SNTech in the markets for pool pump and spa pump motors in the United States using any intangible assets RBC is divesting, licensing, or retaining. This provision is necessary to ensure that RBC does not use the assets it is retaining (such as assets used to manufacture pool pump motors and spa pump motors outside the United States) or divesting (such as know-how for its imPower motors) to manufacture pool pump motors or spa pump motors that can be used in the United States, even if those motors are sold outside the United States. For example, it prevents RBC from selling RBC pool pump motors and spa pump motors into the United States indirectly by selling those motors to overseas pump manufacturers for export into the United States. RBC will compete with SNTech in the U.S. markets for pool pump and spa pump motors using the assets it acquires from AOS. First, this provision prevents RBC from using the intangible assets that are being divested or licensed (such as know-how) to design, develop, manufacture, market, service, distribute, or sell any motors *for use in pool pump or spa pump applications*. Second, it prohibits RBC from using any assets used for pool pump and spa pump motor applications that RBC is retaining to design, develop, manufacture, market, service, distribute, or sell any motors that are designed or developed for use or sale in, or otherwise intended to be used and/or sold in, pool pump or spa pump applications in the United States, regardless of where those motors are actually delivered or sold. Third, this provision prohibits RBC from using the technology, intellectual property, and know-how that it uses for its imPulse spa motors (which are excluded from the divestiture) to design, develop, manufacture, market, service, distribute, or sell any motors for pool pump applications.

(B) 90+ Draft Inducers

The acquirer of the draft inducer assets will obtain the assets it needs to replace the potential competition in the market for 90+ draft inducers that will be lost as a result of RBC's acquisition of AOS's electric motor business. The proposed Final Judgment requires RBC to divest the assets that are necessary for the acquirer to continue AOS's development work on its 90+ draft inducers. The tangible assets being divested *are those used exclusively or primarily to design, develop, manufacture, market, or sell* AOS's 90+ draft inducers, including prototypes, drawings, specifications, records, customer agreements, teaming agreements, and test data. The intangible assets being divested are those *used exclusively or primarily to design, develop, manufacture, market, or sell AOS's 90+ draft inducers, including intellectual property, technical information, know-how, trade secrets, design protocols, and research and development efforts. In addition,* the intangible assets being divested include the *patents, drawings, product designs, packaging designs, marketing and sales data, and quality assurance and control procedures that are used to design, develop, manufacture, market, or sell AOS's 90+ draft inducers.*

The proposed Final Judgment designates Revcor, Inc. as the company to which the draft inducer assets must be sold.[3] The United States determined, after a thorough investigation, that Revcor's expertise in air moving products, previous experience with draft inducers, and prior developmental efforts in conjunction with AOS demonstrate that Revcor can and will attempt *to design, develop, and sell 90+ draft inducers in competition* with RBC. The circumstances of this divestiture also are unique because the assets being divested are those used in AOS's developmental efforts and have not been used to manufacture or sell 90+ draft inducers. Therefore, the United States insisted that the acquirer of the draft inducer assets be identified and approved prior to settlement. Because the number of potential acquirers that could utilize the draft inducer assets would likely be limited, the United States wanted assurances that the acquirer would have the incentive and ability to use the assets and that the

[3] The United States did not include an alternative relief proposal for the draft inducer assets in the proposed Final Judgment because RBC has a binding agreement with Revcor to acquire those assets. RBC and Revcor are prepared to close their acquisition immediately after the close of RBC's acquisition of AOS's electric motor business. In addition, if a trustee must effect the divestiture of the Draft Inducer Divestiture Assets, those assets would be sufficient to allow an acquirer other than Revcor to become a viable competitor in the market for 90+ draft inducers.

package of assets being transferred was sufficient to continue AOS's developmental efforts.

Because the acquirer of the draft inducer assets has been approved by the United States, there is no need for an extended time period for the divestiture. Accordingly, the proposed Final Judgment requires that the divested assets be sold to Revcor within ten days after the Court signs the Hold Separate.

Finally, because Revcor is acquiring primarily intangible assets that will be used to develop a 90+ draft inducer, it may need engineering and other assistance from RBC. Therefore, the proposed Final Judgment requires that RBC enter into a transition services agreement by which RBC will provide such assistance to Revcor for one year.

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 Available 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 sixty 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 sixty 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 United States 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: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, 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 continued the litigation and sought preliminary and permanent injunctions preventing RBC's acquisition of AOS's electric motor business. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the development, manufacture, and sale of electric motors for pool pumps and electric motors for spa pumps in the United States. The United States also is satisfied that the divestiture of the assets described in the proposed Final Judgment will preserve the potential competition for the design and development of 90+ draft inducers in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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 sixty-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 in accordance with the statute, the court 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.").

As the United States Court of Appeals for the District of Columbia has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's 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) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. 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).[4] In determining whether a proposed settlement is in the public interest, the 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's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case); *United States* v. *Republic Serv., Inc.*, 2010–2 Trade Cas. (CCH) ¶ 77,097, 2010 U.S. Dist. LEXIS 70895, No. 08–2076 (RWR), at *10 (D.D.C. July 15, 2010) (finding that "[i]n light of the deferential review to which the government's proposed remedy is accorded, [amicus curiae's] argument that an alternative remedy may be comparably superior, even if true, is not a sufficient basis for finding that the proposed final judgment is not in the public interest.").

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). Therefore, 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; *Republic Serv.*, 2010 U.S. Dist. LEXIS 70895, at *2–3 (entering final judgment "[b]ecause there is an adequate factual foundation upon which to conclude that the government's proposed divestitures will remedy the antitrust violations alleged in the complaint.").

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and 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." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[5] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[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). The language wrote into the statute 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.[6]

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: August 17, 2011.

Respectfully submitted,

Christine A. Hill (D.C. Bar No. 461048),
U.S. Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (202) 305–2738.

Certificate of Service

I, Christine A. Hill, hereby certify that on August 17, 2011, I caused a copy of the foregoing Competitive Impact Statement, as well as the Complaint, Hold Separate Stipulation and Order, and Explanation of Consent Decree Procedures filed in this matter, to be served upon Defendants Regal Beloit Corporation and A.O. Smith Corporation by mailing the documents electronically to the duly authorized legal representatives of Defendants as follows:

[4] *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'").

[5] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and 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).

[6] *See United States* v. *Enovo 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."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that 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. *Regal Beloit Corporation and A.O. Smith Corporation,* Defendants.

Case No.: Judge:

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on August 17, 2011, and the United States and Defendants, Regal Beloit Corporation ("RBC") and A.O. Smith Corporation ("AOS"), 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 or assets by RBC to assure that competition is not substantially lessened;

And whereas, the United States requires RBC 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, 15 U.S.C. 18, as amended.

II. Definitions

As used in this Final Judgment:

A. "RBC" means Defendant Regal Beloit Corporation, a Wisconsin corporation with its headquarters in Beloit, Wisconsin, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "AOS" means Defendant A.O. Smith Corporation, a Delaware corporation with its headquarters in Milwaukee, Wisconsin, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Acquirer of the Pump Motor Divestiture Assets" means SNTech, the entity to which RBC divests the Pump Motor Divestiture Assets.

D. "Acquirer of the Draft Inducer Divestiture Assets" means Revcor, the entity to which RBC divests the Draft Inducer Divestiture Assets.

E. "SNTech" means SNTech, Inc., a Delaware corporation with its headquarters in Phoenix, Arizona, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. "Revcor" means Revcor, Inc., an Illinois corporation with its headquarters in Carpentersville, Illinois, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. "Divested RBC Product Lines" means all motors smaller than NEMA 140 frame that, as of the date the Court signs the Hold Separate Stipulation and Order in this matter, are being designed, developed, manufactured, marketed, distributed, and/or sold by or for RBC for use in pool pump and/or spa pump applications, including, but not limited to, single-speed motors, two-speed motors, three-speed motors, the imPower motors, variable speed motors, and electronically commutated motors. However, the Divested RBC Product Lines shall exclude RBC's imPulse motors; RBC's imPower motors that, as of the date the Court signs the Hold Separate Stipulation and Order in this matter, have been or are being designed or developed for use and/or sale, and are intended to be used and/or sold, solely outside of the United States; and all motors that, as of the date the Court signs the Hold Separate Stipulation and Order in this matter, are being designed, developed, manufactured, marketed, distributed, and/or sold by or for AOS.

H. "Divested AOS Product Line" means all AOS draft inducers that, as of the date the Court signs the Hold Separate Stipulation and Order in this matter, are being marketed to furnace manufacturers and/or are being designed and/or developed for use in furnaces having a thermal efficiency of 90 percent or greater.

I. "Pump Motor Divestiture Assets" means:

(1) All tangible assets that are used to design, develop, manufacture, market, service, distribute, and/or sell any of the Divested RBC Product Lines, including, but not limited to, manufacturing equipment, machining, tooling, dies, prototypes, models, drawings, blueprints, bills of material, specifications, inventory, supplies, customer lists, contracts, agreements, accounts, credit records, teaming arrangements, leases, commitments, manuals, licenses, permits, authorizations, and repair and performance records.

(2) All intangible assets used exclusively or primarily to design, develop, manufacture, market, service, distribute, and/or sell any of the Divested RBC Product Lines, including, but not limited to, research and development activities, patents, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, product designs, packaging designs, design protocols, safety procedures, marketing and sales data, quality assurance and control procedures, design tools and simulation capabilities, technical information RBC provides to its own employees, customers, suppliers, agents, or licensees, and data concerning historic and current research and development efforts relating to the Divested RBC Product Lines, including, but not limited to, designs and experiments, the results of such designs and experiments, testing protocols, and the results of product testing.

(3) With respect to any intangible assets used to design, develop, manufacture, market, service, distribute, and/or sell any of the Divested RBC Product Lines that are not included in

paragraph II(I)(2), above, and that prior to the filing of the Complaint in this matter were used to design, develop, manufacture, market, service, distribute, and/or sell any of the Divested RBC Product Lines and any other RBC product, a non-exclusive, perpetual, worldwide, non-transferrable, royalty-free license for such intangible assets to be used for the design, development, manufacture, marketing, servicing, distribution, and/or sale of any of the Divested RBC Product Lines; provided, however, that any such license is transferrable to any future purchaser of substantially all of the Pump Motor Divestiture Assets. Any improvements or modifications to these intangible assets developed by the Acquirer of the Pump Motor Divestiture Assets shall be owned solely by that acquirer.

The Pump Motor Divestiture Assets shall exclude the trademarks, trade names, service marks, or service names "Regal Beloit," "Marathon," "Leeson," "FASCO," "imPower," and "imPulse," or any Internet domain names. However, for the sole and limited purpose of marketing, distributing, servicing, and/or selling any of the Divested RBC Product Lines, RBC shall grant the Acquirer of the Pump Motor Divestiture Assets a worldwide and royalty-free license to use the trademarks, trade names, service marks, or service names "Marathon," "Leeson," "FASCO," "imPower," and the Internet domain names impowerdealer.com and pumpmotors.com for a period of one year from the date the Pump Motor Divestiture Assets are divested to the Acquirer of the Pump Motor Divestiture Assets.

The Pump Motor Divestiture Assets shall exclude those assets used by FASCO Australia Pty, Ltd., FASCO Motors Thailand, and CMG Engineering Group Pty, Ltd., and the subsidiaries of each of these entities, unless those assets have, prior to the time the Court signs the Hold Separate Stipulation and Order in this matter, been used in any way to design, develop, manufacture, market, service, distribute, and/or sell motors smaller than NEMA 140 frame that are designed or developed for use and/or sale in, or are otherwise intended to be used and/or sold in, the United States for pool pump and/or spa pump applications.

J. "Draft Inducer Divestiture Assets" means:

(1) All tangible assets that are used exclusively or primarily to design, develop, manufacture, market, and/or sell the Divested AOS Product Line, including, but not limited to, drawings, specifications, tooling, dies, models, prototypes, records, customer agreements, teaming agreements, and test data.

(2) The following intangible assets that are used to design, develop, manufacture, market, and/or sell the Divested AOS Product Line: patents, drawings, product designs, packaging designs, marketing and sales data, and quality assurance and control procedures.

(3) All intangible assets that are used exclusively or primarily to design, develop, manufacture, market, and/or sell the Divested AOS Product Line, including, but not limited to, research and development activities, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, design protocols, and data concerning historic and current research and development efforts relating to the Divested AOS Product Line, including, but not limited to, designs and experiments, the results of such designs and experiments, testing protocols, and the results of product testing.

III. Applicability

This Final Judgment applies to RBC and AOS, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Divestitures

A. RBC is ordered and directed, within ten calendar days after the Court signs the Hold Separate Stipulation and Order in this matter, to divest the Pump Motor Divestiture Assets to the Acquirer of the Pump Motor Divestiture Assets and to divest the Draft Inducer Divestiture Assets to the Acquirer of the Draft Inducer Divestiture Assets in a manner consistent with this Final Judgment.

B. Defendants shall not interfere with any negotiations by the Acquirer of the Pump Motor Divestiture Assets to employ any: (1) Current or former RBC employee who has been, at any time during the two years prior to the date the Court signs the Hold Separate Stipulation and Order in this matter, responsible for the design, development, manufacture, marketing, servicing, distribution, and/or sale of any of the Divested RBC Product Lines that are designed or developed for use in, or are otherwise intended to be used in, the United States for pool pump and/or spa pump applications for at least 50 percent of his or her time during any three month period; (2) RBC employees with the following titles who have, at any time during the two years prior to the date the Court signs the Hold Separate Stipulation and Order in this matter, devoted 20 percent or more of his or her time during any three month period to the design, development, manufacture, marketing, servicing, distribution, and/or sale of any of the Divested RBC Product Lines that are designed or developed for use in, or are otherwise intended to be used in, the United States for pool pump and/or spa pump applications: Pump Product Manager, Customer Service Leader, Product Service Engineer, Senior Application Engineer—Pump, New Product Development Project Leader, Electronics Design Engineer, Software Engineer, Mechanical Design Manager, Electrical Design Manager, Mechanical Design Engineer, Laboratory Technician, Agency/Compliance Engineer, Variable Speed Team Leader, and Production Leading Hand; and (3) employee of RBC's CASA facility in Juarez, Mexico who has worked in any way on any of the Divested RBC Product Lines at any time during one year prior to the date the Court signs the Hold Separate Stipulation and Order in this matter. Defendants will not interfere with any negotiations by the Acquirer of the Draft Inducer Divestiture Assets to employ any current or former AOS employee who was, at any time during one year prior to the date the Court signs the Hold Separate Stipulation and Order in this matter, primarily responsible for the design, development, manufacture, marketing, and/or sale of the Divested AOS Product Line as well as the Lead Engineer, Blower Products, of AOS's Electrical Products Company. Interference with respect to this paragraph includes, but is not limited to, enforcement of non-compete clauses and offers to increase salary or other benefits apart from those offered company-wide.

C. RBC shall warrant to the Acquirer of the Pump Motor Divestiture Assets that the tangible Pump Motor Divestiture Assets will be operational on the date of sale.

D. RBC shall not take any action that will impede in any way the operation, use, or divestiture of the Pump Motor Divestiture Assets. Defendants shall not take any action that will impede in any way the use or divestiture of the Draft Inducer Divestiture Assets.

E. RBC shall not design, develop, manufacture, market, service, distribute, and/or sell any motors smaller than NEMA 140 frame for use in pool pump or spa pump applications using any intangible assets divested or licensed (except trademarks, trade names, service marks, service names, or Internet domain names) pursuant to paragraph

II(I) of this Final Judgment. In addition, RBC shall not design, develop, manufacture, market, service, distribute, and/or sell any motors smaller than NEMA 140 frame that are designed or developed for use and/or sale in, or otherwise intended to be used and/or sold in, pool pump or spa pump applications in the United States, regardless of where those motors are actually delivered and/or sold, using any assets that are specifically excluded (except trademarks, trade names, service marks, service names, or Internet domain names) from the definition of Pump Motor Divestiture Assets in paragraph II(I) of this Final Judgment. Further, RBC shall not design, develop, manufacture, market, service, distribute, and/or sell any motors smaller than NEMA 140 frame that are designed or developed for use and/or sale in, or otherwise intended to be used and/or sold in, pool pump applications utilizing the technology, intellectual property, and/or know-how that is used in the design, development, and/or manufacture of RBC's imPulse motor.

F. RBC shall enter into a transition services agreement with the Acquirer of the Pump Motor Divestiture Assets for a period of one year. This agreement shall include technical and engineering assistance relating to motors for pool pump and spa pump applications. This agreement shall also include sufficient assistance to provide the Acquirer of the Pump Motor Divestiture Assets the ability to develop the imPower 2.6 horsepower pool pump motor. The terms and conditions of any contractual arrangement meant to satisfy this provision must be commercially reasonable.

G. RBC shall enter into a transition services agreement with the Acquirer of the Draft Inducer Divestiture Assets for a period of one year. This agreement shall include technical and engineering assistance relating to draft inducers for furnaces having a thermal efficiency of 90 percent or greater. The terms and conditions of any contractual arrangement meant to satisfy this provision must be commercially reasonable.

H. RBC shall enter into a supply agreement to supply the Divested RBC Product Lines to the Acquirer of the Pump Motor Divestiture Assets in quantities and at prices agreed to between RBC and the Acquirer of the Pump Motor Divestiture Assets. The duration of this supply agreement shall not be longer than six months. Subject to written approval by the United States, in its sole discretion, at the option of the Acquirer of the Pump Motor Divestiture Assets, RBC shall agree to one or more extensions of this agreement, so long as such extensions do not total more than six months in duration. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion.

I. RBC shall enter into a supply agreement to supply raw materials and/or motor components used in the design, development, and/or manufacture of the Divested RBC Product Lines sufficient to meet all or part of the needs of the Acquirer of the Pump Motor Divestiture Assets. The duration of this supply agreement shall not be longer than one year. Subject to written approval by the United States, in its sole discretion, at the option of the Acquirer of the Pump Motor Divestiture Assets, RBC shall agree to one or more extensions of this agreement, so long as such extensions do not total more than six months in duration. The terms and conditions of any such supply agreement shall be subject to the approval of the United States, in its sole discretion.

J. During the terms of the supply agreements discussed in paragraphs IV(H) and IV(I) of this Final Judgment, RBC shall establish, implement, and maintain procedures and take such other steps that are reasonably necessary to prevent the disclosure of the quantities of motors, materials, and components ordered or purchased from RBC by the Acquirer of the Pump Motor Divestiture Assets, the prices paid by the Acquirer of the Pump Motor Divestiture Assets, and any other competitively sensitive information regarding the performance of RBC or the Acquirer of the Pump Motor Divestiture Assets under these supply agreements, to any employee of RBC that has responsibility for marketing, distributing, and/or selling motors for pool pump and/or spa pump applications in competition with the Acquirer of the Pump Motor Divestiture Assets. RBC shall, within thirty days after the Court signs the Hold Separate Stipulation and Order in this matter, submit to the United States Department of Justice, Antitrust Division ("Antitrust Division") a document setting forth in detail the procedures implemented to effect compliance with this paragraph. The Antitrust Division shall notify RBC within ten days whether it approves of or rejects RBC's compliance plan, in its sole discretion. In the event that RBC's compliance plan is rejected, the reasons for the rejection shall be provided to RBC and RBC shall submit, within ten days of receiving the notice of rejection, a revised compliance plan. If RBC and the Antitrust Division cannot agree on a compliance plan, the Antitrust Division shall have the right to request that the Court rule on whether RBC's proposed compliance plan is reasonable..

K. Unless the United States otherwise consents in writing, the divestiture of the Pump Motor Divestiture Assets shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Pump Motor Divestiture Assets can and will be used by the Acquirer of the Pump Motor Divestiture Assets as part of a viable, ongoing business that is engaged in the design, development, manufacture, marketing, servicing, distribution, and sale of the Divested RBC Product Lines and the divestiture of the Pump Motor Divestiture Assets will remedy the competitive harm alleged in the Complaint. The divestiture of the Pump Motor Divestiture Assets shall be made to an acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the design, development, manufacture, marketing, servicing, distribution, and sale of the Divested RBC Product Lines. The divestiture of the Pump Motor Divestiture Assets shall be accomplished so as to satisfy the United States, in its sole discretion, that the terms of any agreement between the Acquirer of the Pump Motor Divestiture Assets and RBC do not give RBC the ability unreasonably to raise that acquirer's costs, to lower that acquirer's efficiency, or otherwise to interfere in the ability of that acquirer to compete effectively.

L. Unless the United States otherwise consents in writing, the divestiture of the Draft Inducer Divestiture Assets shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Acquirer of the Draft Inducer Divestiture Assets can and will attempt to use the Draft Inducer Divestiture Assets to design, develop, and sell draft inducers for use in furnaces having a thermal efficiency of 90 percent or greater and the divestiture of the Draft Inducer Divestiture Assets will remedy the competitive harm alleged in the Complaint. The divestiture of the Draft Inducer Divestiture Assets shall be made to an acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to design, develop, and sell draft inducers for use in furnaces having a thermal efficiency of 90 percent or greater. The divestiture of the Draft Inducer Divestiture Assets shall be accomplished so as to satisfy the United

States, in its sole discretion, that the terms of any agreement between the Acquirer of the Draft Inducer Divestiture Assets and RBC do not give RBC the ability unreasonably to raise that acquirer's costs, to lower that acquirer's efficiency, or otherwise to interfere in the ability of that acquirer to compete effectively.

V. Appointment of Trustee

A. If RBC has not divested the Pump Motor Divestiture Assets and the Draft Inducer Divestiture Assets within the time period specified in Section IV(A), RBC shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Pump Motor Divestiture Assets and/or the Draft Inducer Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Pump Motor Divestiture Assets and/or the Draft Inducer Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures to acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the 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 trustee may hire at the cost and expense of RBC any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to sales by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of RBC, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to RBC and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Pump Motor Divestiture Assets and the Draft Inducer Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the 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 Pump Motor Divestiture Assets and/or the Draft Inducer Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Pump Motor Divestiture Assets and/or the Draft Inducer Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The 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 the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. If the trustee is responsible for effecting either of the divestitures required herein, within two business days following execution of a definitive divestiture agreement, the trustee shall notify the United States of any proposed divestiture required by Section V of this Final Judgment. The trustee also shall notify RBC. 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 Pump Motor Divestiture Assets and/or the Draft Inducer Divestiture Assets, together with full details of the same.

B. Within fifteen 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 trustee, if applicable, additional information concerning the proposed divestiture(s), the proposed acquirer(s), and any other potential acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States has been provided the additional information requested from Defendants, the proposed acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to RBC and the trustee stating whether or not it objects to any proposed divestiture. If the United States provides written notice that it does not object, the divestiture(s) may be consummated, subject only to RBC's 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 V shall not be consummated. Upon objection by RBC 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 divestiture made pursuant to Sections IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. 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 Antitrust Division, 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 Antitrust Division, 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 respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

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 Antitrust Division, 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 ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

X. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), during the term of this Final Judgment, Defendants, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest (including, but not limited to, any financial, security, loan, equity, or management interest) in any entity engaged in the United States in the design, development, production, marketing, servicing, distribution, or sale of electric motors for pool pumps, electric motors for spa pumps, or draft inducers for use in furnaces having a thermal efficiency of 90 percent or greater.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about electric motors for pool pumps, electric motors for spa pumps, and draft inducers for use in furnaces having a thermal efficiency of 90 percent or greater. Notification shall be provided at least thirty calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the thirty-day period after notification, representatives of the Antitrust Division make a written request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XI. No Reacquisition

Defendants may not reacquire any part of the Pump Motor Divestiture Assets or the Draft Inducer Divestiture Assets during the term of this Final Judgment.

XII. 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.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. 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's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

[FR Doc. 2011–21590 Filed 8–23–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of an Open Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Announcement of Meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; as amended 5 U.S.C., App. 2), notice is hereby given to announce an open meeting of the Advisory Committee on Apprenticeship (ACA) being held on September 22–23, 2011, in Hanover, Maryland.

The ACA, an advisory board to the Secretary of Labor, is a discretionary Committee established by the Secretary of Labor, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended 5 U.S.C., App. 2, and it's implementing regulations (41 CFR parts 101–6 and 102–3). All meetings of the ACA are open to the public.

Time and Date: The meeting will begin at approximately 8:30 a.m. Eastern Time on Thursday, September 22, 2011, and continue until approximately 5 p.m. The meeting will reconvene on Friday, September 23, 2011, at approximately 8:30 a.m. Eastern Time and adjourn at approximately 12 noon.

Place: The meeting location is the International Finishing Trades Institute, 7230 Parkway Drive, Hanover, Maryland 21076.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Mr. John V. Ladd, Administrator, Office of Apprenticeship, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5311, Washington, DC 20210. *Telephone:* (202) 693–2796, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This meeting is open to the public and members of the public are invited to attend the proceedings. If individuals have special needs and/or disabilities that will require special accommodations, please contact Ms. Kenya Huckaby on (202) 693–3795 no later than Thursday, September 15, 2011, to request for arrangements to be made. Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd, Administrator, Office of Apprenticeship, ETA, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue, NW., Washington, DC 20210. Such submissions must be sent by Thursday, September 15, 2011, to be included in the record for the meeting.

The agenda is subject to change due to time constraints and priority items which may come before the ACA between the time of this publication and the scheduled date of the ACA meeting.

Purpose of the Meeting and Topics To Be Discussed

The purpose of the meeting is to consider several policy matters affecting Registered Apprenticeship programs. The agenda will focus on the following topics:

- Workgroup Report-Outs and Open Committee Discussion
- Extended Discussion on New Partnerships and Community College Articulation Agreements
- Updates on Pre-Apprenticeship Policy Guidance and Technical Assistance
- Public Comment

Any member of the public who wishes to speak at the meeting must indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. John V. Ladd, by Thursday, September 15, 2011. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 19th day of August 2011.

Jane Oates,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2011–21641 Filed 8–23–11; 8:45 am]

BILLING CODE 4510–FR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Electronic Records Archives

AGENCY: National Archives and Records Administration.

ACTION: Notice of Charter Renewal.

SUMMARY: This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Electronic Records Archives. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Electronic Records Archives in NARA's ceiling of discretionary advisory committees.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka, 301–837–1782.

SUPPLEMENTARY INFORMATION: NARA has determined that the renewal of the Advisory Committee on Electronic Records Archives is in the public interest due to the expertise and valuable advice the Committee members provide on technical, mission, and service issues related to the Electronic Records Archives (ERA). NARA will use the Committee's recommendations on issues related to the development, implementation, and use of the ERA system. NARA's Committee Management Officer (CMO) is Mary Ann Hadyka.

Dated: August 16, 2011.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011–21717 Filed 8–23–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used when veterans or other authorized individuals request information from or copies of documents in military service records. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 24, 2011, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (ISP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995

(Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request Pertaining to Military Records.

OMB number: 3095–0029.

Agency form number: SF 180.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 1,028,769.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel record).

Estimated total annual burden hours: 85,731 hours.

Abstract: The authority for this information collection is contained in 36 CFR 1233.18. In accordance with rules issued by the Department of Defense (DOD) and Department of Homeland Security (DHS, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Forms (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. Veterans and next-of-kin of deceased veterans can also use eVetRecs (*http://www.archives.gov/research_room/vetrecs/*) to order copies.

Dated: August 18, 2011.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2011–21718 Filed 8–23–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 1 p.m., Monday, August 29, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Proposed Rule—Part 704 of NCUA's Rules and Regulations, Corporate Credit Unions.

2. NCUA Guaranteed Notes Maintenance.

3. Temporary Corporate Credit Union Stabilization Fund Assessment.

RECESS: 1:45 p.m.

TIME AND DATE: 2 p.m., Monday, August 29, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Merger Request Pursuant to Part 708b of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–21760 Filed 8–22–11; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0166; Docket Numbers 50–352 and 50–353]

Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. NPF–39 and NPF–85 for an Additional 20-Year Period, Exelon Generation Company, LLC, Limerick Generating Station

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of operating licenses NPF–39 and NPF–85, which authorizes Exelon Generation Company, LLC (EXELON), to operate the Limerick Generating Station (LGS) Unit 1 at 3515 megawatts thermal and LGS Unit 2 at 3515 megawatts thermal, respectively. The renewed licenses would authorize the applicant to operate LGS, Units 1 and 2, for an additional 20 years beyond the period specified in the current license. LGS Units 1 and 2 are located in Limerick, PA; the current operating license for LGS Unit 1 expires on October 26, 2024, and LGS Unit 2 expires on June 22, 2029.

EXELON submitted the application dated June 22, 2011, pursuant to Title 10, Part 54, of the Code of Federal Regulations (10 CFR part 54), to renew operating licenses NPF–39 and NPF–85. A notice of receipt and availability of the license renewal application (LRA) was published in the **Federal Register** on July 26, 2011 (76 FRN 44624).

The Commission's staff has determined that EXELON has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is therefore acceptable for docketing. The current Docket Numbers, 50–352 and 50–353, for operating license numbers NPF–39 and NPF–85, respectively, will be retained. The determination to accept the LRA for docketing does not constitute a determination that a renewed license should be issued, and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed licenses, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been

identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated May 1996. In considering the LRA, the Commission must find that the applicable requirements of Subpart A of 10 CFR Part 51 have been satisfied, and that matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding the environmental scoping meeting will be the subject of a separate **Federal Register** notice. Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing or petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 . and is accessible from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room online in the NRC library at *http://www.nrc.gov/reading-rm/adams.html. http://www.nrc.gov/readingrm/adams.html* Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov*. If a request for a hearing/petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the basis for each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application to renew the operating license for LGS are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* the NRC's Web site while the application is under review. The application may be accessed in ADAMS through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Number ML111790800. As stated above, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC's Public Document Room (PDR) reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

The NRC staff has verified that a copy of the license renewal application is also available to local residents near LGS, at the Pottstown Regional Public Library, 500 East High Street, Pottstown, PA 19464–5656.

Dated at Rockville, Maryland, this 12th day of August 2011.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–21631 Filed 8–23–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Heavy Water

Pursuant to 10 CFR 110.70 (b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.rnc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this export license application follows.

NRC EXPORT LICENSE APPLICATION

[Description of material]

Name of applicant, date of application, date received, application No., docket No.	Material type	Total quantity	End use	Recipient country
Concert Pharmaceuticals, Inc. November 30, 2010 December 7, 2010 .. XMAT414 ..... 11005905	Deuterium Oxide (D_2O—heavy water).	~ 20,000.0 kgs (liters).	Non-nuclear end-use for producing an active pharmaceutical ingredient known as CTP–499, which incorporates heavy water as the source of deuterium to achieve the hydrogen-deuterium exchange.	China.

Dated this 16th day of August 2011 in Rockville, Maryland.

For the Nuclear Regulatory Commission.

Janice E. Owens,

Acting Deputy Director, Office of International Programs.

[FR Doc. 2011–21628 Filed 8–23–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0191]

Draft License Renewal Interim Staff Guidance LR–ISG–2011–05: Ongoing Review of Operating Experience Request for Public Comment

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Draft license renewal guidance; request for comment.

SUMMARY: The NRC requests public comment on Draft License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2011–05, "Ongoing Review of Operating Experience." This LR–ISG provides guidance and clarification concerning ongoing review of plant-specific and industry-wide operating experience as an attribute of aging management programs used at nuclear power plants for compliance with Title 10 of the Code of Federal Regulations (10 CFR) part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants."

DATES: Comments must be filed no later than September 23, 2011. 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–2011–0191 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0191. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available

documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The draft LR–ISG proposes to revise the NRC staff's recommended aging management programs in NUREG–1801, Revision 2, "Generic Aging Lessons Learned (GALL) Report," and the NRC staff's aging management review procedures and acceptance criteria in NUREG–1800, Revision 2, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" (SRP–LR). The NRC published both of these reports in December 2010 and they are available in ADAMS under Accession Nos. ML103490036 and ML103490041, respectively. The draft LR–ISG–2011–05 is available electronically under ADAMS Accession Number ML11203A411.

• *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–2011–0191.

• *NRC's Interim Staff Guidance Web Site:* LR–ISG documents are also available online under the "License Renewal" heading at *http://www.nrc.gov/reading-rm/doc-collections/#int*.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Homiack, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* 301–415–1683; or *e-mail: Matthew.Homiack@nrc.gov*.

Background

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents, such as the GALL Report and SRP–LR. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document before it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISG in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC staff has developed draft LR–ISG–2011–05 to clarify guidance on how the ongoing review of operating experience should be used to ensure the effectiveness of the license renewal aging management programs. While the SRP–LR states that an acceptable aging management program should include the ongoing review of operating experience, the program descriptions in the GALL Report do not reflect this guidance. As such, the NRC staff is proposing revisions to the GALL Report aging management programs to better align them with the guidance in the SRP–LR. The NRC staff is also proposing to revise its review procedures and acceptance criteria for comparing aging management review results with the GALL Report to better address this issue. In addition, the NRC staff is proposing to clarify the SRP–LR's description of the operating experience program element. One reason for this clarification is to better describe how license renewal applicants should obligate themselves to the ongoing review of operating experience for license renewal.

The NRC staff's proposed guidance addresses the ongoing review of operating experience as a generic activity applicable to all license renewal aging management programs. The NRC staff believes that this approach is consistent with how nuclear power plant licensees currently implement operating experience review activities. In addition, the NRC staff is proposing that licensees may credit these existing operating experience review activities, provided they ensure that these existing activities are appropriate for reviewing operating experience specifically related to aging management.

Proposed Action

By this action, the NRC is requesting public comments on draft LR–ISG–2011–05. This LR–ISG proposes certain revisions to NRC guidance on implementation of the requirements in 10 CFR part 54. The NRC staff will make a final determination regarding issuance of the LR–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 16th day of August 2011.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–21629 Filed 8–23–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65163; File No. PCAOB–2011–01]

Public Company Accounting Oversight Board; Order Approving Proposed Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers

August 18, 2011.

I. Introduction

On June 21, 2011, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and Section 19(b)(1)[2] of the Securities Exchange Act of 1934 (the "Exchange Act"), a proposed rule change (PCAOB–2011–01) to establish an interim inspection program related to audits of brokers and dealers. The proposed Rule 4020T amends Section 4 of the Board's rules. The Board also adopted amendments to Section 1 of its rules to add notes following Rules 1001(a)(v), 1001(a)(vi), and 1001(p)(vi). The proposed rule change was published for comment in the **Federal Register** on July 12, 2011.[3] The Commission received one comment letter on the proposed rule change. This order approves the proposed rule change.

II. Discussion

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[4] amended the Sarbanes-Oxley Act to give the Board explicit oversight authority with respect to audits of brokers and dealers that are registered with the Commission.[5] Among other things, the Board is authorized to

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b)(1).

[3] Release No. 34–64814 (Jul. 6, 2011) [76 FR 40961 (Jul. 12, 2011)].

[4] Public Law 111–203, 124 Stat. 1376 (Jul. 21, 2010).

[5] For information regarding the audit of brokers' and dealers' financial statements and examination of reports regarding compliance with Commission requirements, *see generally* Rule 17a–5 under the Exchange Act (17 CFR 240.17a–5) and related SEC rules and forms.

establish an inspection program by rule.[6] Section 104(a)(2) of the Sarbanes-Oxley Act provides that, in establishing such a program:

- The Board may allow for differentiation among classes of brokers and dealers;
- The Board shall consider whether differing inspection schedules would be appropriate with respect to auditors that issue audit reports only for brokers or dealers that do not receive, handle, or hold customer securities or cash or are not members of the Securities Investor Protection Corporation; and
- If the Board exempts any public accounting firm from such an inspection program, the auditor would not be required to register with the Board.

The Board has filed a proposed rule change to establish a temporary rule for an interim program of inspection that would allow the Board to begin inspections of relevant audits and auditors and provide a source of information to help guide decisions about the scope and elements of a permanent program. The Board explained that it intended to take a careful and informed approach in establishing a permanent program that appropriately protects the public interest and the interests of investors, including consideration of potential costs and regulatory burdens that would be imposed on different categories of registered public accounting firms and classes of brokers and dealers.[7] The Board also explained that it did not intend to make the necessary judgments without first gathering and assessing relevant information, but that it did not intend to postpone all use of its new inspection authority until after those judgments were made.[8]

The temporary rule provides that the Board will publish a report on the interim program no less frequently than every twelve months, beginning twelve months after the date the rule takes effect and continuing until rules for a permanent program take effect. Each report will describe the progress of the interim program and any significant observations that either may bear on the Board's consideration of a permanent program or the publication of which may otherwise be appropriate to protect the interests of investors or to further the public interest.

III. Discussion of Comments

The Commission received one comment letter on the proposed rule change.[9] The commenter, a small registered accounting firm that performs audits of broker-dealers but not issuers, expressed strong support for the inclusive scope of the temporary rule and also for the establishment of a permanent program of inspection that would include all auditors of broker-dealers.[10] The commenter supported a program that would not differentiate among types of brokers and dealers or exempt certain public accounting firms, noting their view that any such limitations would not be "fully protecting the public interest and interest of investors."[11]

IV. Conclusion

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. PCAOB–2011–01) be and hereby isapproved.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21600 Filed 8–23–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65162; File No. PCAOB–2011–02]

Public Company Accounting Oversight Board; Order Approving Proposed Board Funding Final Rules for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules

August 18, 2011.

I. Introduction

On June 21, 2011, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and Section 19(b)(1)[2] of the Securities Exchange Act of 1934 (the "Exchange Act"), a proposed rule change (PCAOB–2011–02) relating to the funding of the Board's operations (PCAOB Rules 7100 through 7106) and proposed amendments to certain definitions that would appear in PCAOB Rule 1001. The proposed rule change was published for comment in the **Federal Register** on July 12, 2011.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Discussion

Section 109[4] of the Sarbanes-Oxley Act, as originally enacted, provided that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms[5]) would be collected from issuers[6] based on each issuer's relative average, monthly equity market capitalization.[7] The amount due from issuers was referred to as the Board's "accounting support fee."

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[8] amended the Sarbanes-Oxley Act to grant the Board explicit oversight authority with respect to audits of brokers and dealers registered with the Commission.[9] To provide funds for the Board's oversight of those audits, the Dodd-Frank Act amended Section 109 of the Sarbanes-Oxley Act to require that the Board allocate a portion of the accounting

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[6] Section 104(a)(2)(A) of the Sarbanes-Oxley Act.

[7] *See* PCAOB Release No. 2011–01 (Jun. 14, 2011), at 3.

[8] *See id.*

[9] *See* letter from Farkouh Furman & Faccio LLP.

[10] *See id.*

[11] *Id.*

[12] 17 CFR 200.30–11(b)(2).

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b)(1).

[3] Release No. 34–64816 (Jul. 6, 2011) [76 FR 40950 (Jul. 12, 2011)].

[4] 15 U.S.C. 7219.

[5] Section 102(f) of the Sarbanes-Oxley Act (15 U.S.C. 7212(f)) states that the PCAOB shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to cover the costs of processing and reviewing registration applications and annual reports.

[6] Section 2(a)(7) of the Sarbanes-Oxley Act (15 U.S.C. 7201(a)(7)) and PCAOB rules define "issuer" to mean an issuer (as defined in Section 3 of the Exchange Act (15 U.S.C. 78c)), the securities of which are registered under Section 12 of the Exchange Act (15 U.S.C. 78*l*), or that is required to file reports under Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*, and that it has not withdrawn. *See* PCAOB Rule 1001(i)(iii).

[7] Section 109(g) of the Sarbanes-Oxley Act.

[8] Public Law 111–203, 124 Stat. 1376 (Jul. 21, 2010).

[9] For information regarding the audit of brokers' and dealers' financial statements and examination of reports regarding compliance with Commission requirements, *see generally* Rule 17a–5 under the Exchange Act (17 CFR 240.17a–5) and related SEC rules and forms.

support fee among brokers and dealers, or classes of brokers and dealers, based on their relative "net capital (before or after any adjustments)."[10]

As amended by the Dodd-Frank Act, Section 109 of the Sarbanes-Oxley Act requires that the rules of the Board provide for the equitable allocation, assessment, and collection by the Board of the accounting support fee among issuers, brokers, and dealers, and allow "for differentiation among classes of issuers, brokers, and dealers, as appropriate."[11] This section further provides that "[t]he amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board."[12]

Accordingly, the Board has filed a proposed rule change to its funding rules to allocate a portion of the accounting support fee among brokers and dealers,[13] to establish classes of brokers and dealers for funding purposes, to describe the methods for allocating the appropriate portion of the accounting support fee to each broker and dealer within each class, and to address the collection of the assessed share of the broker-dealer accounting support fee from brokers and dealers.

In addition, the proposed rule change includes amendments to the Board's funding rules with respect to the allocation, assessment, and collection of the accounting support fee among issuers. Among other things, the proposed rule change:

- Revises the basis for calculating an issuer's market capitalization to include the market capitalization of all classes of the issuer's voting and non-voting common equity;
- Increases the average, monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies; and
- Includes technical amendments to the Board's funding rules.

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, the PCAOB is required to begin the allocation, assessment, and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the Board has indicated that the amendments to its funding rules are effective for the allocation, assessment, and collection of the 2011 broker-dealer accounting support fee for brokers and dealers and the 2012 issuer accounting support fee for issuers.

III. Conclusion

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. PCAOB–2011–02) be and hereby is approved.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

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[10] Sections 109(d)(2) and 109(h) of the Sarbanes-Oxley Act, which state, in part, that amounts due from brokers and dealers "shall be in proportion to the net capital of the broker or dealer (before or after any adjustments)."

[11] Section 109(d)(2) of the Sarbanes-Oxley Act. Pursuant to Section 109(e) of the Sarbanes-Oxley Act, the Financial Accounting Standards Board ("FASB") accounting support fee is to be allocated among issuers. Brokers and dealers therefore will not be allocated a portion of the FASB annual accounting support fee.

[12] Section 109(h)(3) of the Sarbanes-Oxley Act.

[13] The PCAOB is amending its rules to add definitions of "broker" and "dealer" consistent with the definitions that the Dodd-Frank Act added to Section 110 of the Sarbanes-Oxley Act. These definitions incorporate the definition of "broker" in Section 3(a)(4) of the Exchange Act and "dealer" in Section 3(a)(5) of the Exchange Act, but only include those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. *See* Sections 110(3) and (4) of the Sarbanes-Oxley Act.

[14] 17 CFR 200.30–11(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65160; File No. SR–NYSEArca–2011–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Relating to Listing and Trading of the WisdomTree Dreyfus Australia & New Zealand Debt Fund Under NYSE Arca Equities Rule 8.600

August 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 3, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following fund of the WisdomTree Trust (the "Trust") under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): WisdomTree Dreyfus Australia & New Zealand Debt Fund. The shares of the Fund are collectively referred to herein as the "Shares." The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the WisdomTree Dreyfus Australia & New Zealand Debt Fund ("Fund") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Shares

[3] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-

will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company and the Fund has filed a registration statement on Form N–1A ("Registration Statement") with the Commission. The Fund is currently known as the "WisdomTree Dreyfus New Zealand Dollar Fund" and is an actively managed exchange-traded fund. The Commission approved listing and trading on the Exchange of the WisdomTree Dreyfus New Zealand Dollar Fund pursuant to Section 19(b)(2) of the Exchange Act on May 8, 2008 (the "May 2008 Order").[4] On April 14, 2011, the WisdomTree Dreyfus New Zealand Dollar Fund filed a supplement to its Registration Statement (the "Supplement") pursuant to Rule 497 under the Securities Act of 1933. As stated in the Supplement, the WisdomTree Dreyfus New Zealand Dollar Fund, effective on or after August 26, 2011, will change its investment objective and strategy and will be renamed the "WisdomTree Dreyfus Australia & New Zealand Debt Fund." The Fund's new name, investment objective, and investment strategies are not reflected in the May 2008 Order and are described in more detail herein.[5]

Description of the Shares and the Fund

WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund.[6] The Dreyfus Corporation serves as sub-adviser for the Fund ("Sub-Adviser").[7] The Bank of New York Mellon is the administrator, custodian and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.[8]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[9] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. WisdomTree Asset Management is not affiliated with any broker-dealer. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, the Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event (a) The Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

WisdomTree Dreyfus Australia & New Zealand Debt Fund

As noted above, effective on or after August 26, 2011, the WisdomTree Dreyfus New Zealand Dollar Fund will change its investment objective and investment strategies and be renamed the "WisdomTree Dreyfus Australia & New Zealand Debt Fund." Upon implementation of the change, the Fund's new investment objective will be to seek a high level of total returns consisting of both income and capital appreciation and its investment strategies will be changed as described herein. Shareholders who wish to remain in the Fund do not need to take any action. Shareholders who, for whatever reason, do not wish to remain invested in the Fund may sell their Shares at any time prior to or after implementation of the planned change.[10]

managed funds of the WisdomTree Trust); 58564 (September 17, 2008), 73 FR 55194 (September 24, 2008) (SR–NYSEArca–2008–86) (order approving Exchange listing and trading of WisdomTree Dreyfus Emerging Currency Fund); 62604 (July 30, 2010), 75 FR 47323 (August 5, 2010) (SR–NYSEArca–2010–49) (order approving listing and trading of WisdomTree Emerging Markets Local Debt Fund); 62623 (August 2, 2010), 75 FR 47652 (August 6, 2010) (SR–NYSEArca–2010–51) (order approving listing and trading of WisdomTree Dreyfus Commodity Currency Fund); 63598 (December 22, 2010), 75 FR 82106 (December 29, 2010) (SR–NYSEArca–2010–98) (order approving listing and trading of WisdomTree Managed Futures Strategy Fund); and 63919 (February 16, 2011), 76 FR 10073 (February 23, 2011) (SR–NYSEArca–2010–116) (order approving listing and trading of WisdomTree Asia Local Debt Fund).

[4] *See* Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust). In the May 2008 Order, the Commission also approved the WisdomTree Australian Dollar Fund for Exchange listing and trading; however, such fund has not commenced trading.

[5] *See* Form 497, Supplement to Registration Statement on Form N–1A for the Trust, dated April 14, 2011 (File Nos. 333–132380 and 811–21864). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Supplement and the Registration Statement.

[6] WisdomTree Investments, Inc. ("WisdomTree Investments") is the parent company of WisdomTree Asset Management.

[7] The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

[8] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act"). *See* Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812–13458). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] The Adviser represents that the Supplement has been sent to existing Shareholders of the Fund

Continued

Under normal circumstances, the Fund will invest at least 80% of its net assets in Fixed Income Securities denominated in Australian or New Zealand dollars.[11] For purposes of this proposed rule change, Fixed Income Securities include bonds, notes or other debt obligations, such as government or corporate bonds, denominated in Australian or New Zealand dollars, including issues denominated in Australian or New Zealand dollars that are issued by "supranational issuers", such as the International Bank for Reconstruction and Development, and the International Finance Corporation, as well as development agencies supported by other national governments, or other regional development banks. Under normal circumstances, the Fund may invest up to 20% of its assets in Fixed Income Securities denominated in U.S. dollars. The Fund may invest in Money Market Securities and derivative instruments and other investments, as described below.

The Fund intends to focus its investments on "Sovereign Debt." For these purposes, Sovereign Debt means Fixed Income Securities issued by governments, government agencies and government-sponsored enterprises in Australia and New Zealand that are denominated in either Australian or New Zealand dollars. This includes inflation-linked bonds designed to provide protection against increases in general inflation rates. The Fund may invest in corporate debt of companies organized in Australia or New Zealand or that have significant economic ties to Australia or New Zealand. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than $200 million par amount outstanding if (i) The Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of providing exposure to a broad range of Fixed Income Securities denominated in Australian or New Zealand dollars, and (iii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund.

The Fund's investments generally will be allocated among the countries according to relative economic size and market depth. As a larger country with greater market depth, it is anticipated that Australian issues would comprise a larger percentage of the portfolio than issues of New Zealand issuers.

The universe of Australian and New Zealand Fixed Income Securities currently includes securities that are rated "investment grade" as well as "non-investment grade."[12] Therefore, the Fund will invest in both investment grade and non-investment-grade securities. Securities rated investment grade generally are considered to be of higher credit quality and subject to lower default risk. Although securities rated below investment grade may offer the potential for higher yields, they generally are subject to a higher potential risk of loss. The Fund expects to have 75% or more of its assets invested in investment grade bonds, though this percentage may change from time to time in accordance with market conditions and the debt ratings assigned to countries and issuers.

Because the debt ratings of issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade Fixed Income Securities will change from time to time in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 10% of its assets in securities rated BB or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality. In determining whether a security is of "comparable quality," the Adviser or Sub-Adviser will consider, for example, current information about the credit quality of the issuer and whether or not the issuer of the security has issued other rated securities.

The Fund will attempt to limit interest rate risk by maintaining an aggregate portfolio duration of between two and eight years under normal market conditions. Aggregate portfolio duration is important to investors as an indication of the Fund's sensitivity to changes in interest rates. Funds with higher durations generally are subject to greater interest rate risk. An aggregate portfolio duration of between two and eight years generally would be considered to be "intermediate." The Fund's actual portfolio duration may be longer or shorter depending upon market conditions. The Fund may also invest in short-term Money Market Securities (as defined below) denominated in the currencies of countries in which the Fund invests.

The Fund intends to invest in Fixed Income Securities of at least 13 non-affiliated issuers. The Fund will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government, or any non-U.S. government, or their respective agencies and instrumentalities or government-sponsored enterprises).[13]

The Fund intends to qualify each year as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code of 1986, as

to notify them of the planned change. The Supplement and additional information have been posted on the Fund's Web site at *http://www.wisdomtree.com.*

[11] The term "under normal market circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[12] As of December 2010, the amount of Australian dollar denominated debt outstanding was as follows: short-term non-government securities issued in Australia, AU$385.9 billion; long-term non-government securities issued in Australia, AU$433.3 billion; Australian government securities, AU$334.5 billion; and non-government securities issued offshore, AU$507.2 billion. Source: Reserve Bank of Australia, at *http://www.rba.gov.au/statistics/tables/xls/d04hist.xls?accessed=2502-06:57:23.* As of March 28, 2011, AU$1.000 equaled approximately US$1.0260. Source: Reserve Bank of Australia, at *http://www.rba.gov.au/statistics/frequency/exchange-rates.html.* As of January 2011, the amount of New Zealand government securities outstanding was approximately NZ$56.282 billion. Source: Reserve Bank of New Zealand, at *http://www.rbnz.govt.nz/statistics/govfin/d1/data.html.* As of March 28, 2011 NZ$1.00 equaled approximately US$0.752. Source: Reserve Bank of New Zealand, at *http://www.rbnz.govt.nz/statistics/exandint/b1/data.html.*

[13] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See e.g.*, Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

amended.[14] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. The Subchapter M diversification tests generally require that (i) The Fund invest no more than 25% of its total assets in securities (other than securities of the U.S. government or other RICs) of any one issuer or two or more issuers that are controlled by the Fund and that are engaged in the same, similar or related trades or businesses, and (ii) at least 50% of the Fund's total assets consist of cash and cash items, U.S. government securities, securities of other RICs and other securities, with investments in such other securities limited in respect of any one issuer to an amount not greater than 5% of the value of the Fund's total assets and 10% of the outstanding voting securities of such issuer.

In addition to satisfying the above referenced RIC diversification requirements, no portfolio security held by the Fund (other than U.S. government securities and non-U.S. government securities) will represent more than 30% of the weight of the Fund's portfolio and the five highest weighted portfolio securities of the Fund (other than U.S. government securities and/or non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund's portfolio. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government securities or non-U.S. government securities as U.S. or non-U.S. government securities, as applicable.

Money Market Securities

Assets not invested in Fixed Income Securities generally will be invested in Money Market Securities.

The Fund intends to invest in Money Market Securities in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral or to otherwise back investments in derivative instruments. For these purposes, Money Market Securities include: short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by short-term U.S. government securities or non-U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade; except that the Fund may invest in unrated Money Market Securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to Money Market Securities rated investment grade. In determining whether a security is of "comparable quality", the Adviser or Sub-Adviser will consider, for example, current information about the credit quality of the issuer and whether or not the issuer of the security has issued other rated securities.

Derivative Instruments and Other Investments

The Fund may use derivative instruments as part of its investment strategies. Examples of derivative instruments include listed futures contracts,[15] forward currency contracts, non-deliverable forward currency contracts, currency and interest rate swaps, currency options, options on futures contracts, swap agreements and credit-linked notes.[16] The Fund's use of derivative instruments (other than credit-linked notes) will be collateralized or otherwise backed by investments in short term, high-quality U.S. Money Market Securities. Under normal circumstances, the Fund will invest no more than 20% of the value of the Fund's net assets in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures, forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will "set aside" liquid assets to "cover" open positions with respect to such transactions.[17]

The Fund may engage in foreign currency transactions, and may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to "lock in" the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.

The Fund may enter into swap agreements, including interest rate swaps and currency swaps (*e.g.*, Australian dollar vs. U.S. dollar), and may buy or sell put and call options on foreign currencies, either on exchanges or in the over-the-counter market. The Fund may enter into repurchase agreements with counterparties that are deemed to present acceptable credit risks, and may enter into reverse repurchase agreements, which involve the sale of securities held by the Fund subject to its agreement to repurchase the securities at an agreed upon date or upon demand and at a price reflecting a market rate of interest.

The Fund may invest in the securities of other investment companies (including money market funds and exchange-traded funds ("ETFs"). The Fund may invest up to an aggregate amount of 15% of its net assets in (a) Illiquid securities and (b) Rule 144A securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other

[14] 26 U.S.C. 851.

[15] The listed futures contracts in which the Fund will invest may be listed on exchanges in the U.S. or in London, Hong Kong or Singapore. Each of the United Kingdom's primary financial markets regulator, the Financial Services Authority, Hong Kong's primary financial markets regulator, the Securities and Futures Commission, and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding ("MMOU"), which is a multi-party information sharing arrangement among major financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

[16] The Fund may invest in credit-linked notes. A credit linked note is a type of structured note whose value is linked to an underlying reference asset. Credit linked notes typically provide periodic payments of interest as well as payment of principal upon maturity. The value of the periodic payments and the principal amount payable upon maturity are tied (positively or negatively) to a reference asset such as an index, government bond, interest rate or currency exchange rate. The ongoing payments and principal upon maturity typically will increase or decrease depending on increases or decreases in the value of the reference asset. The Fund's investments in credit-linked notes will be limited to notes providing exposure to Fixed Income Securities denominated in Australian or New Zealand dollars. The Fund's overall investment in credit-linked notes will not exceed 25% of the Fund's assets.

[17] *See* 15 U.S.C. 80a-18. *See also*, Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

instruments that lack readily available markets.[18]

The Fund will not invest in non-U.S. equity securities.

The Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value ("NAV")[19] only in large blocks of Shares ("Creation Units") in transactions with Authorized Participants. Creation Units generally will consist of 100,000 Shares, though this may change from time to time. Creation Units are not expected to consist of less than 50,000 Shares. The Fund generally will issue and redeem Creation Units in exchange for a portfolio of Fixed Income Securities closely approximating the holdings of the Fund and/or a designated amount of cash in U.S. dollars. Once created, Shares of the Fund will trade on the secondary market in amounts less than a Creation Unit. Shares may be redeemed from the Fund only in Creation Unit aggregations. Upon delivery and settlement of the Shares upon redemption, the Fund will deliver to the redeeming Authorized Participant a designated basket of Fixed Income Securities and an amount of cash. Together, such designated basket and amount of cash constitute the "Redemption Payment." The Redemption Payment may consist entirely of cash at the discretion of the Fund.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Availability of Information

The Fund's Web site (*http://www.wisdomtree.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[20] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session[21] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[22] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of Fixed Income Securities, and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange. In addition, during hours when the markets for Fixed Income Securities in the Fund's portfolio are closed, the Portfolio Indicative Value will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations.

The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line.

Intra-day and end-of-day prices are readily available through major market data providers and broker-dealers for the Fixed Income Securities, Money Market Securities and derivative instruments held by the Fund.

Initial and Continued Listing

The Shares will be subject to Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3[23] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Fund will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for

[18] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 14617 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[19] The NAV of the Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time (the "NAV Calculation Time"). NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

[20] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[21] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

[22] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[23] *See* 17 CFR 240.10A–3.

reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[24]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[25] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. According to the Registration Statement, under normal circumstances, the Fund will invest at least 80% of its net assets in Fixed Income Securities denominated in Australian or New Zealand dollars, and the Fund intends to focus its investments on Sovereign Debt. The Fund expects to have 75% or more of its assets invested in investment grade bonds, though this percentage may change from time to time in accordance with market conditions and the debt ratings assigned to countries and issuers. The Fund will not invest more than 10% of its assets in securities rated BB or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality, as noted above. The Fund expects to have 75% or more of its assets invested in investment grade bonds, though this percentage may change from time to time in accordance with market conditions and the debt ratings assigned to countries and issuers. Generally, a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Under normal circumstances, the Fund will invest no more than 20% of the value of the Fund's net assets in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in non-U.S. equity securities.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information

[24] For a list of the current members of ISG, see *http://www.isgportal.org.* The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[25] 15 U.S.C. 78f(b)(5).

is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Portfolio Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2011–54 and should be submitted on or before September 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21591 Filed 8–23–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65161; File No. SR–NYSEArca–2011–53]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. To Reflect a Change to the Benchmark Index Applicable to the Russell Equity ETF

August 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

[26] 17 CFR 200.30–3(a)(12).

"Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 3, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the benchmark index applicable to Russell Equity ETF (the "Fund," and formerly known as the "One Fund"). Russell Equity ETF is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 Commission has approved listing and trading on the Exchange of shares ("Shares") of One Fund, a series of U.S. One Trust,[3] under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares").[4] As of February 23, 2011, Frank Russell Company ("Russell") acquired U.S. One, Inc., the previous investment adviser for the Fund. As a result, the Fund's investment adviser became Russell Investment Management Company ("Adviser").[5] In addition, effective on April 15, 2011, the name of One Fund was changed to Russell Equity ETF and the name of U.S. One Trust was changed to Russell Exchange Traded Funds Trust ("Trust"). Further, on or about May 2, 2011, the custodian, transfer agent and administrator for the Fund changed from The Bank of New York to State Street Bank and Trust Company. These administrative changes were implemented as a result of the acquisition of U.S. One, Inc. by Russell. Shareholders of the Fund were notified of the changes to the Fund's name, the Trust's name, the Fund's investment adviser,[6] and the custodian, transfer agent and administrator in the updated Fund prospectus, dated April 29, 2011, included in the Fund's annual prospectus mailing to shareholders.[7]

In this proposed rule change, the Exchange proposes to reflect a change to the benchmark index applicable to the Fund.[8]

As a result of the acquisition of U.S. One, Inc. by Russell, the Fund seeks to change its underlying benchmark to the Russell Developed Large Cap Index ("Index") from the Fund's current benchmark, the S&P 500 Index.[9] The Index offers investors access to the large-cap segment of the developed equity universe representing approximately 75.4% of the global equity market. The Index includes the largest securities in the Russell Developed Index. As of May 31, 2010, the Index included 2,372 securities in 25 developed countries, with a market capitalization ranging from $238 billion to $1.3 billion; the weighted average market capitalization of Index components was $54.7 billion; and the largest three Index securities and associated Index weights were ExxonMobil (1.58%); Apple Inc. (1.17%); and Chevron Corp. (0.79%). The current benchmark, the S&P 500 Index, includes 500 leading companies in leading industries of the U.S. economy, capturing 75% coverage of U.S. equities. It focuses on large capitalization securities and represents approximately 75% of the U.S. market capitalization. A committee determines the securities included based on a set of published guidelines. The Index includes the Russell 1000®, which represents 90% of U.S. market capitalization. It also includes an additional 1,372 securities which, as of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 61843 (April 5, 2010), 75 FR 18558 (April 12, 2010) (SR–NYSEArca–2010–12) ("One Fund Order"). See *also* Securities Exchange Act Release No. 61689 (March 11, 2010), 75 FR 13181 (March 18, 2010) (SR–NYSEArca–2010–12) ("One Fund Notice," and together with the One Fund Order, collectively, the "One Fund Release").

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Adviser is affiliated with multiple broker-dealers and has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will continue to be in compliance with Commentary .06 to NYSE Arca Equities Rule 8.600. In the event (a) The Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] See the Trust's Post-Effective Amendment No. 5 to Form N–1A, dated April 29, 2011 (File Nos. 333–160877; 811–22320) ("Registration Statement"). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29164 (March 1, 2010) (File No. 812–13815 and 812–13658–01) ("Exemptive Order").

[8] The Adviser represents that, for one year following implementation of the change to the benchmark Index, materials issued by the Fund relating to Fund performance, including materials posted on the Fund's Web site (*http://www.russelletfs.com*), will reference both the current benchmark and the new benchmark Index, in accordance with Item 27(b)(7) of Form N–1A under the 1940 Act. The Adviser represents that the benchmark Index change will be referenced on Russell's Web site, and that the quarterly fact sheet for the Fund, available on the Fund's Web site, will reference the current benchmark and the new benchmark Index for one year.

[9] The change to the Fund's benchmark Index will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement.

May 31, 2010, were listed in other developed countries. The Adviser represents that the investment objective of the Fund has not changed, the Index more accurately represents the investment strategy of the Fund, and the change to the Fund's benchmark will not impact the investment objective or the principal investment strategies for the Fund.

The Adviser has represented that it believes the Index is an appropriate broad-based benchmark index for the Fund and the Fund's investment objective. As represented in the One Fund Release, the Fund's investment objective is to seek long-term capital appreciation. [sic] by investing at least 80% of its total assets in exchange-traded funds ("Underlying ETFs") that track various securities indices comprised of large, mid and small capitalization companies in the United States, Europe and Asia, as well as other developed and emerging markets. As stated in the One Fund Release, the Adviser intends to hold Underlying ETFs that hold equity securities of large, mid and small capitalization companies in the United States, as well as other developed countries and developing countries, and that give the Fund exposure to most major developed and developing markets around the world.[10] Thus, whereas the S&P 500 Index mostly reflects U.S.-based companies, the Index includes a broader range of issuers from both the domestic and international markets, and such range is consistent with, and should better reflect, the Fund's investment objective.

Except for the changes noted above, all other representations made in the One Fund Release remain unchanged.[11] The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[12] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Fund's benchmark Index will continue to be a broad-based index of large capitalization companies. The Index represents approximately 75.4% of the global equity market and includes the largest securities in the Russell Developed Index. As of May 31, 2010, the Index included 2,372 securities in 25 developed countries, with a market capitalization ranging from $238 billion to $1.3 billion; the weighted average market capitalization of Index components was $54.7 billion. The Fund's investment objective is to seek long-term capital appreciation by investing at least 80% of its total assets in Underlying ETFs that track various securities indices comprised of large, mid and small capitalization companies in the United States, Europe and Asia, as well as other developed and emerging markets. All Underlying ETFs are listed and traded on a national securities exchange. The Index includes a broader range of issuers from both the domestic and international markets compared to the S&P 500 Index, and such range is consistent with, and should better reflect, the Fund's investment objective. The Adviser represents that the investment objective of the Fund has not changed, the Index more accurately represents the investment strategy of the Fund, and the change to the Fund's benchmark will not impact the investment objective or the principal investment strategies for the Fund. Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. Except for the changes noted above, all other representations made in the One Fund Release remain unchanged. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the new benchmark Index will continue to be calculated and disseminated in a manner consistent with representations in the One Fund Order. The Adviser has represented that it believes the Index is an appropriate broad-based benchmark index for the Fund. In addition, the Adviser has represented that the change to the Fund's benchmark will not impact shareholders of the Fund, and that the new benchmark Index more accurately reflects the Fund's principal investment strategy and will not result in a change to such strategy.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will permit the Fund to utilize an alternative broad-based, large capitalization benchmark Index that the Adviser believes is an appropriate benchmark for the Fund. The change to the Fund's benchmark Index will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[10] The Adviser employs an asset allocation strategy focused on increasing shareholder return and reducing risk through exposure to a variety of domestic and foreign market segments. The Adviser's asset allocation strategy pre-determines a target mix of investment types for the Fund to achieve its investment objective and then implements the strategy by selecting securities that best represent each of the desired investment types. The strategy also calls for periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the target mix and indicates purchases and sales necessary to return to the target mix. The Adviser selects Underlying ETFs based on their ability to accurately represent the underlying stock market to which the Adviser seeks exposure for the Fund, and seeks to construct a portfolio that will outperform its benchmark. Additionally, the Adviser seeks to maintain a low after-tax cost structure for the Fund and, therefore, also evaluates ETFs based on their underlying costs. The Adviser employs a buy and hold strategy, meaning that it buys and holds securities for a long period of time, with minimal portfolio turnover. The Fund, using a buy and hold strategy, seeks to achieve its investment objective through investment in Underlying ETFs that track certain securities indices. While the Fund intends to primarily invest in Underlying ETFs that hold equity securities, the Adviser may also invest in Underlying ETFs that may hold U.S. and foreign government debt and investment grade corporate bonds. According to the Registration Statement, the Fund does not invest in derivatives. *See* One Fund Release, note 4, *supra*.

[11] *See* note 3, *supra*.

[12] 15 U.S.C. 78f(b)(5).

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–53 and should be submitted on or before September 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21592 Filed 8–23–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65159; File No. SR–NASDAQ–2011–118]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Name and Modify the Contents of the NASDAQ Ouch BBO Feed

August 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2011, the NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to change the name of the NASDAQ Ouch BBO Feed to the NASDAQ MatchView Feed (the "Feed") and to modify the contents of the Feed in two ways. The Feed provides a view of how the Exchange views the Best Bid and Offer ("BBO") available from all market centers for each individual security the Exchange trades.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ 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

This proposal regards the NASDAQ MatchView Feed (formerly known as the NASDAQ Ouch BBO Feed), a data feed that represents the Exchange's view of best bid and offer data received from all market centers. The Feed is available to all Exchange members and market participants equally at no charge, offering all participants transparent, real-time data concerning the Exchange's view of the BBO data. The Exchange makes the Feed available on a subscription basis to market participants that are connected to the Exchange whether through extranets, direct connection, or Internet-based virtual private networks.

Currently, the Feed reflects the Exchange's view of the BBO data, at any given time, based on orders executed on the Exchange and updated quote information from the network processors.[3] The Feed contains the following data elements: symbol, bid price, and ask price.[4] Unlike the Nasdaq TotalView feed, the MatchView feed does not contain information about individual orders, either those residing within the Exchange system or those executed or routed by the Exchange. Unlike the network processor feeds containing the National Best Bid and Offer ("NBBO"), the MatchView Feed does not identify either the market center quoting the BBO or the size of the

[3] The Feed does not reflect all information available to the Exchange. Specifically, the Feed excludes information about the routing of orders to away exchanges. Thus, although the Exchange execution system and routing engine know when a bid or offer from an away market is no longer available because the Exchange has routed an order to the bid or offer, the Feed does not reflect such routing activity.

[4] The Feed also contains a time stamp and message type field for reference.

BBO quotes. It merely contains the symbol and bid and offer prices.

The Exchange is modifying the inputs used for calculating the prices reflected on the Feed. Currently, the Feed reflects bids and offers contained on data feeds from the network processors, as well as certain NASDAQ orders referenced below. In the future, the Feed will continue to reflect these orders entered on the Exchange but rather than reflect only individual exchange bids and offers received from the network processors, the Feed will reflect individual exchange bids and offers received either from the network processor or directly from an exchange that disseminates bids and offers to vendors via a proprietary data feed. The Exchange will reflect bids and offers from another exchange's proprietary data feed only when the Exchange deems the proprietary data feed to be sufficiently reliable and also faster than the network processor.[5]

This determination—whether to utilize bids and offers from the network processor feed or from a direct proprietary data feed—will be made by the Exchange on a market-by-market basis based upon objective criteria about reliability and speed. The determination, once made, will apply to all bids and offers from an exchange; it will not be made on a stock-by-stock basis. Additionally, the determination, once made, will be valid until such time as the away exchange stops disseminating the proprietary data feed in a manner that meets NASDAQ's objective criteria (for example, when that exchange experiences operational difficulties that reduce the reliability and speed of its proprietary data feed). For exchanges that do not disseminate proprietary data feeds or whose proprietary data feeds lack sufficient reliability and speed, the Feed will continue to reflect bids and offers disseminated via the network processor feeds.

Additionally, in a previous filing, the Exchange noted that the Feed depicts the Exchange's view of the BBO for all markets other than the Exchange.[6] In one narrow set of circumstances, the Feed will show the BBO for all markets including the Exchange. Specifically, an order received by the Exchange that improves the BBO will be reflected in the Feed when three circumstances are met: (1) The Exchange receives an order marked by the entering member as any visible bookable order that is not an IOC and is an "Inter-market Sweep" (an order known as a "Day ISO"); (2) the Day ISO order is priced higher than the current Best Bid or lower than the current Best Offer disseminated by the network processor or applicable exchange proprietary data feed; and (3) the Day ISO represents the new best bid or offer on the Exchange. In those circumstances, the new best bid or offer on the Exchange will be transmitted to the network processor and then reflected on the Feed (and the Exchange's other proprietary data feeds, such as NASDAQ TotalView). As stated above, the Feed does not show the market center responsible (whether the Exchange or an away market) for either the Best Bid or Best Offer reflected on the Feed.

These modifications to the Feed will enhance market transparency and foster competition among orders and markets. Member firms may use the Feed to more accurately price their orders based on the Exchange's view of what the BBO is at any point in time, including bids and offers received via proprietary data feeds which may not be reflected in the official NBBO due to latencies inherent in the NBBO's dissemination. As a consequence, member firms may more accurately price their orders on the Exchange, thereby avoiding price adjustments by the Exchange based on a quote that is no longer available. Additionally, members can use the Feed to price orders more aggressively to narrow the NBBO and provide better reference prices for investors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Sections 6(b)(5) of the Act,[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by enhancing transparency through the dissemination of the most accurate quotations data and by clarifying its contents.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 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[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay because it would permit the Exchange to immediately provide the new content of the NASDAQ MatchView Feed to market participants. The Commission believes that waiving

[5] The Exchange is also changing its policies and procedures under Regulation NMS governing the data feeds used by its execution system and routing engine. Current policies state that those systems use data provided by the network processors. In the future, those systems will use data provided either by the network processors or by proprietary feeds offered by certain exchanges directly to vendors. The determination of which data feed to utilize will be the same as the determination made with respect to the Feed. In other words, the Exchange execution system, routing engine and Feed will each utilize the same data for a given exchange although, as set forth in footnote 3 above, the Feed does not contain all information available to the execution system and routing engine.

[6] See Securities Exchange Act Release No. 61451 (Feb. 1, 2010); 75 FR 6246 (Feb. 8, 2010) (filing SR–NASDAQ–2010–012).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

the 30-day operative delay [13] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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 Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–118. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 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 NASDAQ. 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–NASDAQ–2011–118 and should be submitted on or before September 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

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BILLING CODE 8011–01–P

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65165; File No. SR–NYSEAmex–2011–59]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Text of NYSE Amex Equities Rules 92, 513, 514 and Adopting New NYSE Amex Equities Rule 5320 That Is Substantially the Same as Financial Industry Regulatory Authority Rule 5320 To Prohibit Trading Ahead of Customer Orders With Certain Exceptions (Commonly Known as the Manning Rule)

August 18, 2011.

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 August 11, 2011, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete the text of NYSE Amex Equities Rules 92, 513, and 514, which limit trading ahead of customer orders, and adopt a new NYSE Amex Equities Rule 5320 that is substantially the same as Financial Industry Regulatory Authority ("FINRA") Rule 5320. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

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 delete the text of NYSE Amex Equities Rules 92, 513, and 514 which limit trading ahead of customer orders, and adopt a new NYSE Amex Equities Rule 5320 that is substantially the same as FINRA Rule 5320.[4] As with FINRA Rule 5320, proposed NYSE Amex Equities Rule 5320 would prohibit trading ahead of customer orders with certain exceptions, including large order and institutional account exceptions, a no-knowledge exception, a riskless principal exception, an intermarket sweep order ("ISO") exception, and odd lot and bona fide error transaction exceptions, discussed in detail below. Proposed NYSE Amex Equities Rule 5320 also provides the same guidance as FINRA Rule 5320 on minimum price improvement standards, order handling

[4] *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR–FINRA–2009–090). The Exchange's affiliates, New York Stock Exchange LLC and NYSE Arca, Inc., also have filed substantially similar rule filings. *See* SR–NYSE–2011–42 and SR–NYSEArca–2011–57.

procedures, and trading outside normal market hours.

Background

NYSE Amex Equities Rule 92, which applies to Exchange-listed securities, generally prohibits member organizations from trading on a proprietary basis ahead of, or along with, customer orders that are executable at the same price as the proprietary order. The Rule contains several exceptions that make it permissible for a member or member organization to enter a proprietary order while representing a customer order that could be executed at the same price, provided, among other things, that the customer order is not for an account of an individual investor and the customer has provided express permission. Current NYSE Amex Equities Rule 92 also permits riskless transactions for the purpose of facilitating the execution, on a riskless principal basis, of one or more customer orders. NYSE Amex Equities Rule 92 applies to Exchange-listed securities. NYSE Amex Equities Rules 513 and 514 impose limitations on trading ahead of customer limit orders and market orders, respectively, with respect to Nasdaq securities that trade on the Exchange.[5]

Proposal To Adopt Text of FINRA Rule 5320

In conjunction with its rules harmonization with FINRA, the Exchange proposes to delete the text of NYSE Amex Equities Rules 92, 513, and 514 and their supplementary material and adopt the text of FINRA Rule 5320, with certain technical changes, as NYSE Amex Equities Rule 5320. FINRA Rule 5320 generally provides that a FINRA member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

Proposed NYSE Amex Equities Rule 5320 permits a member organization to trade a security on the same side of the market for its own account at a price that would satisfy a customer order in certain circumstances.[6]

Large Orders and Institutional Accounts

The most notable exception to the customer order protection rule is to allow member organizations to negotiate terms and conditions on the acceptance of certain large-sized orders (orders of 10,000 shares or more unless such orders are less than $100,000 in value) or orders from institutional accounts as defined in NASD Rule 3110. Such terms and conditions would permit the member organization to continue to trade alongside or ahead of such customer orders if the customer agrees.

Specifically, under the proposed rule, a member organization would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order provided that the member organization provides clear and comprehensive written disclosure to each customer at account opening and annually thereafter that (a) Discloses that the member organization may trade proprietarily at prices that would satisfy the customer order, and (b) provides the customer with a meaningful opportunity to opt in to the NYSE Amex Equities Rule 5320 protections with respect to all or any portion of its order.

If a customer does not opt in to the protections with respect to all or any portion of its order, the member organization may reasonably conclude that such customer has consented to the member organization trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.[7]

In lieu of providing written disclosure to customers at account opening and annually thereafter, the proposed rule would permit member organizations to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis, provided that the member organization documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. In addition, where a customer has opted in to the NYSE Amex Equities Rule 5320 protections, a member organization may still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the member organization documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order.

No-Knowledge Exception

The Exchange is also proposing to include a "no-knowledge" exception to its customer order protection rule. The proposed exception would allow a proprietary trading unit of a member organization to continue trading in a proprietary capacity and at prices that would satisfy customer orders that were being held by another, separate trading unit at the member organization. The no-knowledge exception would be applicable with respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS. In order to avail itself of the no-knowledge exception, a member organization must first implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders that are held at a separate trading unit.

A member organization that structures its order handling practices in NMS stocks to permit its proprietary and/or market-making desk to trade at prices that would satisfy customer orders held by a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the member organization and the circumstances under which the member organization may trade proprietarily at its market-making desk at prices that would satisfy the customer order.

Riskless Principal Exception

The Exchange's proposal also provides that the obligations under this rule shall not apply to a member organization's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer), provided that the member organization (a) Submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange and (b) has written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable Exchange rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal

[5] *See generally* NYSE Amex Equities Rules 500–525.

[6] Although NYSE Amex Equities Rule 92 refers to member organizations and members, proposed NYSE Amex Equities Rule 5320 would follow the structure of FINRA Rule 5320 and refer to member organizations. Because all NYSE Amex members are associated with NYSE Amex member organizations, proposed NYSE Amex Equities Rule 5320 would apply to them.

[7] As is always the case, customers retain the right to withdraw consent at any time. Therefore, a member organization's reasonable conclusion that a customer has consented to the member organization trading along with such customer's order is subject to further instruction and modification from the customer.

transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

Member organizations must have supervisory systems in place that produce records that enable the member organization and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all orders on which a member organization relies in claiming this exception.

ISO Exception

The proposed rule change also provides that a member organization shall be exempt from the obligation to execute a customer order in a manner consistent with NYSE Amex Equities Rule 5320 with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b)(30)(ii) of SEC Regulation NMS where the customer order is received after the member organization routed the ISO. Where a member organization routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the member organization also shall be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

Odd Lot and Bona Fide Error Exception

In addition, the Exchange proposes applying an exception for a firm's proprietary trade that (1) Offsets a customer odd lot order (*i.e.*, an order less than one round lot, which is typically 100 shares) or (2) corrects a bona fide error. With respect to bona fide errors, member organizations would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception.

Minimum Price Improvement Standards

The proposed rule change establishes the minimum amount of price improvement necessary for a member organization to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order.

Order Handling Procedures

The proposed rule change provides that a member organization must make every effort to execute a marketable customer order that it receives fully and promptly. A member organization that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the member organization on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the member organization and that is consistent with the terms of the orders. In the event that a member organization is holding multiple orders on both sides of the market that have not been executed, the member organization must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of the proposed rule and with the terms of the orders. A member organization can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

Trading Outside Normal Market Hours

A member organization generally may limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4 p.m. Eastern Time. However, if the customer and member organization agree to the processing of the customer's order outside normal market hours, the protections of proposed NYSE Amex Equities Rule 5320 would apply to that customer's order(s) at all times the customer order is executable by the member organization.

Conforming and Other Changes

The Exchange further proposes to make a conforming change to NYSE Amex Equities Rule 900 to delete a reference to NYSE Amex Equities Rule 92 and to delete rule text that provided that NYSE Amex Equities Rule 92 shall not preclude a member or member organization from entering in the Off-Hours Trading Facility an aggregate-price order to buy (sell) 15 or more securities coupled with an identical order to sell (buy) when the member or member organization holds an unexecuted closing-price order for a component security. The Exchange has determined that, as part of the harmonization process, it will not keep this exception to NYSE Amex Equities Rule 92. The Exchange further notes that the NYSE Amex Equities Rule 900 reference is no longer necessary because proposed NYSE Amex Equities Rule 5320 does not bar the entry of an order for a member organization's own account when holding an unexecuted customer order; rather, if the NYSE Amex Equities Rule 5320 customer order protections are applicable, the member organization only needs to ensure that a customer order is executed up to the size and the same or better price at which it traded for its own account.

The Exchange has filed a series of operative delays for NYSE Amex Equities Rule 92(c)(3),[8] which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit to a designated Exchange database a report of the execution of the facilitated order. In extending the operative delay to September 12, 2011, the Exchange stated that it was premature to require firms to meet the Exchange's Front End Systemic Capture reporting requirements pending full harmonization of the respective customer order protection rules with FINRA. In adopting NYSE Amex Equities Rule 5320 and deleting the text of NYSE Amex Equities Rule 92 in its entirety, no additional operative delays for NYSE Amex Equities Rule 92(c)(3) are necessary, as the Exchange will use the FINRA model to capture riskless principal orders.[9]

For consistency with Exchange rules, NYSE Amex Equities Rule 5320 will have certain differences from FINRA Rule 5320. The Exchange proposes not to include Supplementary Material .02(b) and portions of Supplementary Material .06, which relate to OTC equity securities, and to change all references from "members" to "member organizations."

Implementation Date

The Exchange proposes to implement NYSE Amex Equities Rule 5320 on the same date that FINRA implements FINRA Rule 5320, which FINRA has announced will be September 12, 2011.[10] The Exchange will provide notice of the implementation date to its

[8] *See* Securities Exchange Act Release Nos. 59620 (Mar. 23, 2009), 74 FR 14176 (Mar. 30, 2009) (SR–NYSEALTR–2009–29); 60397 (July 30, 2009), 74 FR 39128 (Aug. 5, 2009) (SR–NYSEAmex–2009–48); 61250 (Dec. 29, 2009), 75 FR 477 (Jan. 5, 2010) (SR–NYSEAmex–2009–92); 62540 (July 21, 2010), 75 FR 44040 (July 27, 2010) (SR–NYSEAmex–2010–70); 63454 (December 7, 2010), 75 FR 77685 (Dec. 13, 2010) (SR–NYSEAmex–2010–111); and 64859 (July 12, 2011), 76 FR 42147 (July 18, 2011) (SR–NYSEAmex–2011–47).

[9] All member organizations that would be subject to proposed NYSE Amex Equities Rule 5320 also are subject to FINRA Rule 5320 and would therefore report riskless principal transactions as required under the FINRA Rule. There would be no need for them to separately report riskless principal transactions to the Exchange.

[10] *See* FINRA Regulatory Notice 11–24.

member organizations via an Information Memorandum.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5)[12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that adopting the proposed rule at the same time that FINRA implements a substantially similar rule will contribute to investor protection by defining important parameters by which member organizations must abide when trading proprietarily while holding customer limit and market orders, and foster cooperation by harmonizing requirements across self-regulatory organizations.

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[13] and Rule 19b–4(f)(6) thereunder.[14] 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.

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–59 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–NYSEAmex–2011–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–59 and should be submitted on or before September 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21657 Filed 8–23–11; 8:45 am]

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[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65166; File No. SR–NYSEArca–2011–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Text of NYSE Arca Equities Rules 6.16 and 6.16A, and Adopting New NYSE Arca Equities Rule 5320 That Is Substantially the Same as Financial Industry Regulatory Authority Rule 5320 To Prohibit Trading Ahead of Customer Orders With Certain Exceptions (Commonly Known as the Manning Rule)

August 18, 2011.

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 August 11, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 delete the text of NYSE Arca Equities Rules 6.16 and 6.16A, which limit trading ahead of customer limit and market orders, and adopt new NYSE Arca Equities Rule 5320 that is substantially the same as Financial Industry Regulatory Authority ("FINRA") Rule 5320. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

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 delete the text of NYSE Arca Equities Rules 6.16 and 6.16A, which limit trading ahead of customer limit and market orders, and adopt new NYSE Arca Equities Rule 5320 that is substantially the same as FINRA Rule 5320.[4] As with FINRA Rule 5320, proposed NYSE Arca Equities Rule 5320 would prohibit trading ahead of customer orders with certain exceptions, including large order and institutional account exceptions, a no-knowledge exception, a riskless principal exception, an intermarket sweep order ("ISO") exception, and odd lot and bona fide error transaction exceptions, discussed in detail below. Proposed NYSE Arca Equities Rule 5320 also provides the same guidance as FINRA Rule 5320 on minimum price improvement standards, order handling procedures, and trading outside normal market hours.

Background

NYSE Arca Equities Rule 6.16 generally prohibits an ETP Holder from trading on a proprietary basis ahead of an unexecuted customer order. However, NYSE Arca Equities Rule 6.16 allows an ETP Holder to negotiate specific terms and conditions applicable to the acceptance of limit orders pursuant to certain conditions of the rule, and NYSE Arca Equities Rule 6.16A allows an ETP Holder to negotiate specific terms and conditions applicable to the acceptance of market orders pursuant to certain conditions of the rule. NYSE Arca Equities Rule 6.16 is based on NASD Interpretive Material 2110–2 and NYSE Arca Equities Rule 6.16A is based on NASD Rule 2111.[5]

Proposal To Adopt Text of FINRA Rule 5320

In conjunction with its rules harmonization with FINRA, the Exchange proposes to delete the text of NYSE Arca Equities Rules 6.16 and 6.16A and adopt the text of FINRA Rule 5320, with certain technical changes, as NYSE Arca Equities Rule 5320. FINRA Rule 5320 generally provides that a FINRA member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

Proposed NYSE Arca Equities Rule 5320 permits an ETP Holder to trade a security on the same side of the market for its own account at a price that would satisfy a customer order in certain circumstances.

Large Orders and Institutional Accounts

The most notable exception to the customer order protection rule is to allow ETP Holders to negotiate terms and conditions on the acceptance of certain large-sized orders (orders of 10,000 shares or more unless such orders are less than $100,000 in value) or orders from institutional accounts as defined in NASD Rule 3110. Such terms and conditions would permit the ETP Holder to continue to trade alongside or ahead of such customer orders if the customer agrees.

Specifically, under the proposed rule, an ETP Holder would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order provided that the ETP Holder provides clear and comprehensive written disclosure to each customer at account opening and annually thereafter that (a) Discloses that the ETP Holder may trade proprietarily at prices that would satisfy the customer order, and (b) provides the customer with a meaningful opportunity to opt in to the NYSE Arca Equities Rule 5320 protections with respect to all or any portion of its order.

If a customer does not opt in to the protections with respect to all or any portion of its order, the ETP Holder may reasonably conclude that such customer has consented to the ETP Holder trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.[6]

In lieu of providing written disclosure to customers at account opening and annually thereafter, the proposed rule would permit ETP Holders to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis, provided that the ETP Holder documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. In addition, where a customer has opted in to the NYSE Arca Equities Rule 5320 protections, an ETP Holder may still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the ETP Holder documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order.

No-Knowledge Exception

The Exchange is also proposing to include a "no-knowledge" exception to its customer order protection rule. The proposed exception would allow a proprietary trading unit of an ETP Holder to continue trading in a proprietary capacity and at prices that would satisfy customer orders that were being held by another, separate trading unit at the ETP Holder. The no-knowledge exception would be applicable with respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS. In order to avail itself

[4] *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR–FINRA–2009–090). The Exchange's affiliates, New York Stock Exchange LLC and NYSE Amex LLC, also have filed substantially similar rule filings. *See* SR–NYSE–2011–43 and SR–NYSEAmex–2011–59.

[5] *See* Securities Exchange Act Release No. 64780 (June 30, 2011), 76 FR 39960 (July 7, 2011) (SR–NYSEArca–2011–40).

[6] As is always the case, customers retain the right to withdraw consent at any time. Therefore, an ETP Holder's reasonable conclusion that a customer has consented to the ETP Holder trading along with such customer's order is subject to further instruction and modification from the customer.

of the no-knowledge exception, an ETP Holder must first implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders that are held at a separate trading unit.

An ETP Holder that structures its order handling practices in NMS stocks to permit its proprietary and/or market-making desk to trade at prices that would satisfy customer orders held by a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the ETP Holder and the circumstances under which the ETP Holder may trade proprietarily at its market-making desk at prices that would satisfy the customer order.

Riskless Principal Exception

The Exchange's proposal also provides that the obligations under this rule shall not apply to an ETP Holder's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer), provided that the ETP Holder (a) Submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange and (b) has written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable Exchange rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

ETP Holders must have supervisory systems in place that produce records that enable the ETP Holder and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all orders on which an ETP Holder relies in claiming this exception.

ISO Exception

The proposed rule change also provides that an ETP Holder shall be exempt from the obligation to execute a customer order in a manner consistent with NYSE Arca Equities Rule 5320 with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b)(30)(ii) of SEC Regulation NMS where the customer order is received after the ETP Holder routed the ISO. Where an ETP Holder routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the ETP Holder also shall be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

Odd Lot and Bona Fide Error Exception

In addition, the Exchange proposes applying an exception for a firm's proprietary trade that (1) Offsets a customer odd lot order (*i.e.*, an order less than one round lot, which is typically 100 shares) or (2) corrects a bona fide error. With respect to bona fide errors, ETP Holders would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception.

Minimum Price Improvement Standards

The proposed rule change establishes the minimum amount of price improvement necessary for an ETP Holder to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order.

Order Handling Procedures

The proposed rule change provides that an ETP Holder must make every effort to execute a marketable customer order that it receives fully and promptly. An ETP Holder that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the ETP Holder on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the ETP Holder and that is consistent with the terms of the orders. In the event that an ETP Holder is holding multiple orders on both sides of the market that have not been executed, the ETP Holder must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of the proposed rule and with the terms of the orders. An ETP Holder can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

Trading Outside Normal Market Hours

An ETP Holder generally may limit the life of a customer order to the period of normal market hours of 6:30 a.m. to 1 p.m. Pacific Standard Time. However, if the customer and ETP Holder agree to the processing of the customer's order outside normal market hours, the protections of proposed NYSE Arca Equities Rule 5320 would apply to that customer's order(s) at all times the customer order is executable by the ETP Holder.

Conforming and Other Changes

For consistency with Exchange rules, NYSE Arca Equities Rule 5320 will have certain differences from FINRA Rule 5320. The Exchange proposes not to include Supplementary Material .02(b) and portions of Supplementary Material .06, which relate to OTC equity securities, in the Commentary of NYSE Arca Equities Rule 5320 and to change all references from "members" to "ETP Holders."

Implementation Date

The Exchange proposes to implement NYSE Arca Equities Rule 5320 on the same date that FINRA implements FINRA Rule 5320, which FINRA has announced will be September 12, 2011.[7] The Exchange will provide notice of the implementation date to ETP Holders via a Regulatory Information Bulletin.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that adopting the proposed rule at the same time that FINRA implements a substantially similar rule will contribute to investor protection by defining important parameters by which ETP Holders must abide when trading proprietarily while holding customer limit and market orders, and foster cooperation by harmonizing

[7] *See* FINRA Regulatory Notice 11–24.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

requirements across self-regulatory organizations.

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 [10] and Rule 19b–4(f)(6) thereunder.[11] 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.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–57 and should be submitted on or before September 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy.

Secretary.

[FR Doc. 2011–21661 Filed 8–23–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65164; File No. SR–NYSE–2011–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Text of NYSE Rule 92 and Adopting a New NYSE Rule 5320 That Is Substantially the Same as Financial Industry Regulatory Authority Rule 5320 To Prohibit Trading Ahead of Customer Orders With Certain Exceptions (Commonly Known as the Manning Rule)

August 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that August 11, 2011, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 delete the text of NYSE Rule 92, which limits trading ahead of customer orders, and adopt a new NYSE Rule 5320 that is substantially the same as Financial Industry Regulatory Authority ("FINRA") Rule 5320. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete the text of NYSE Rule 92, which limits trading ahead of customer orders, and adopt a new NYSE Rule 5320 that is substantially the same as FINRA Rule 5320.[3] As with FINRA Rule 5320, proposed NYSE Rule 5320 would prohibit trading ahead of customer orders with certain exceptions, including large order and institutional account exceptions, a no-knowledge exception, a riskless principal exception, an intermarket sweep order ("ISO") exception, and odd lot and bona fide error transaction exceptions, discussed in detail below. Proposed NYSE Rule 5320 also provides the same guidance as FINRA Rule 5320 on minimum price improvement standards, order handling procedures, and trading outside normal market hours.

Background

NYSE Rule 92, which applies to Exchange-listed securities, generally prohibits member organizations from trading on a proprietary basis ahead of, or along with, customer orders that are executable at the same price as the proprietary order. The Rule contains several exceptions that make it permissible for a member or member organization to enter a proprietary order while representing a customer order that could be executed at the same price, provided, among other things, that the customer order is not for an account of an individual investor and the customer has provided express permission. Current NYSE Rule 92 also permits riskless transactions for the purpose of facilitating the execution, on a riskless principal basis, of one or more customer orders.

Proposal To Adopt Text of FINRA Rule 5320

In conjunction with its rules harmonization with FINRA, the Exchange proposes to delete the text of NYSE Rule 92 and its supplementary material and adopt the text of FINRA Rule 5320, with certain technical changes, as NYSE Rule 5320. FINRA Rule 5320 generally provides that a FINRA member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

Proposed NYSE Rule 5320 permits a member organization to trade a security on the same side of the market for its own account at a price that would satisfy a customer order in certain circumstances.[4]

Large Orders and Institutional Accounts

The most notable exception to the customer order protection rule is to allow member organizations to negotiate terms and conditions on the acceptance of certain large-sized orders (orders of 10,000 shares or more unless such orders are less than $100,000 in value) or orders from institutional accounts as defined in NASD Rule 3110. Such terms and conditions would permit the member organization to continue to trade alongside or ahead of such customer orders if the customer agrees.

Specifically, under the proposed rule, a member organization would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order provided that the member organization provides clear and comprehensive written disclosure to each customer at account opening and annually thereafter that (a) discloses that the member organization may trade proprietarily at prices that would satisfy the customer order, and (b) provides the customer with a meaningful opportunity to opt in to the NYSE Rule 5320 protections with respect to all or any portion of its order.

If a customer does not opt in to the protections with respect to all or any portion of its order, the member organization may reasonably conclude that such customer has consented to the member organization trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.[5]

In lieu of providing written disclosure to customers at account opening and annually thereafter, the proposed rule would permit member organizations to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis, provided that the member organization documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. In addition, where a customer has opted in to the NYSE Rule 5320 protections, a member organization may still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the member organization documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order.

No-Knowledge Exception

The Exchange is also proposing to include a "no-knowledge" exception to its customer order protection rule. The proposed exception would allow a proprietary trading unit of a member organization to continue trading in a proprietary capacity and at prices that would satisfy customer orders that were being held by another, separate trading unit at the member organization. The no-knowledge exception would be applicable with respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS. In order to avail itself of the no-knowledge exception, a member organization must first implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders that are held at a separate trading unit.

A member organization that structures its order handling practices in NMS stocks to permit its proprietary and/or market-making desk to trade at prices that would satisfy customer orders held by a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the member organization and the circumstances under which the member organization may trade proprietarily at its market-making desk at prices that would satisfy the customer order.

Riskless Principal Exception

The Exchange's proposal also provides that the obligations under this rule shall not apply to a member organization's proprietary trade if such proprietary trade is for the purposes of

[3] *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR–FINRA–2009–090). The Exchange's affiliates, NYSE Amex LLC and NYSE Arca, Inc., also have filed substantially similar rule filings. *See* SR–NYSEAmex–2011–59 and SR–NYSEArca–2011–57.

[4] Although NYSE Rule 92 refers to member organizations and members, proposed NYSE Rule 5320 would follow the structure of FINRA Rule 5320 and refer to member organizations. Because all NYSE members are associated with NYSE member organizations, proposed NYSE Rule 5320 would apply to them.

[5] As is always the case, customers retain the right to withdraw consent at any time. Therefore, a member organization's reasonable conclusion that a customer has consented to the member organization trading along with such customer's order is subject to further instruction and modification from the customer.

facilitating the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer), provided that the member organization (a) submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange and (b) has written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable Exchange rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

Member organizations must have supervisory systems in place that produce records that enable the member organization and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all orders on which a member organization relies in claiming this exception.

ISO Exception

The proposed rule change also provides that a member organization shall be exempt from the obligation to execute a customer order in a manner consistent with NYSE Rule 5320 with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b)(30)(ii) of SEC Regulation NMS where the customer order is received after the member organization routed the ISO. Where a member organization routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the member organization also shall be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

Odd Lot and Bona Fide Error Exception

In addition, the Exchange proposes applying an exception for a firm's proprietary trade that (1) offsets a customer odd lot order (i.e., an order less than one round lot, which is typically 100 shares) or (2) corrects a bona fide error. With respect to bona fide errors, member organizations would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception.

Minimum Price Improvement Standards

The proposed rule change establishes the minimum amount of price improvement necessary for a member organization to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order.

Order Handling Procedures

The proposed rule change provides that a member organization must make every effort to execute a marketable customer order that it receives fully and promptly. A member organization that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the member organization on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the member organization and that is consistent with the terms of the orders. In the event that a member organization is holding multiple orders on both sides of the market that have not been executed, the member organization must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of the proposed rule and with the terms of the orders. A member organization can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

Trading Outside Normal Market Hours

A member organization generally may limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4 p.m. Eastern Time. However, if the customer and member organization agree to the processing of the customer's order outside normal market hours, the protections of proposed NYSE Rule 5320 would apply to that customer's order(s) at all times the customer order is executable by the member organization.

Conforming and Other Changes

The Exchange further proposes to make a conforming change to NYSE Rule 900 to delete a reference to NYSE Rule 92 and to delete rule text that provided that Rule 92 shall not preclude a member or member organization from entering in the Off-Hours Trading Facility an aggregate-price order to buy (sell) 15 or more securities coupled with an identical order to sell (buy) when the member or member organization holds an unexecuted closing-price order for a component security. The Exchange has determined that, as part of the harmonization process, it will not keep this exception to NYSE Rule 92. The Exchange further notes that the NYSE Rule 900 reference is no longer necessary because proposed NYSE Rule 5320 does not bar the entry of an order for a member organization's own account when holding an unexecuted customer order; rather, if the NYSE Rule 5320 customer order protections are applicable, the member organization only needs to ensure that a customer order is executed up to the size and the same or better price at which it traded for its own account.

The Exchange has filed a series of operative delays for NYSE Rule 92(c)(3),[6] which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit to a designated Exchange database a report of the execution of the facilitated order. In extending the operative delay to September 12, 2011, the Exchange stated that it was premature to require firms to meet the Exchange's Front End Systemic Capture reporting requirements pending full harmonization of the respective customer order protection rules with FINRA. In adopting NYSE Rule 5320 and deleting the text of NYSE Rule 92 in its entirety, no additional operative delays for NYSE Rule 92(c)(3) are necessary, as the Exchange will use the FINRA model to capture riskless principal orders.[7]

For consistency with Exchange rules, NYSE Rule 5320 will have certain differences from FINRA Rule 5320. The Exchange proposes not to include Supplementary Material .02(b) and portions of Supplementary Material .06, which relate to OTC equity securities,

[6] *See* Securities Exchange Act Release Nos. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007) (SR–NYSE–2007–114); 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR–NYSE–2008–29); 59621 (Mar. 23, 2009), 74 FR 14179 (Mar. 30, 2009) (SR–NYSE–2009–30); 60396 (July 30, 2009), 74 FR 39126 (Aug. 5, 2009) (SR–NYSE–2009–73); 61251 (Dec. 29, 2009), 75 FR 482 (Jan. 5, 2010) (SR–NYSE–2009–129); 62541 (July 21, 2010), 75 FR 44042 (July 27, 2010) (SR–NYSE–2010–52); 63455 (Dec. 7. 2010), 75 FR 77687 (Dec. 13, 2010) (SR–NYSE–2010–76); and 64860 (July 12, 2011), 76 FR 42150 (July 18, 2011) (SR–NYSE–2011–32).

[7] All member organizations that would be subject to proposed NYSE Rule 5320 also are subject to FINRA Rule 5320 and would therefore report riskless principal transactions as required under the FINRA Rule. There would be no need for them to separately report riskless principal transactions to the Exchange.

and to change all references from "members" to "member organizations."

Implementation Date

The Exchange proposes to implement NYSE Rule 5320 on the same date that FINRA implements FINRA Rule 5320, which FINRA has announced will be September 12, 2011.[8] The Exchange will provide notice of the implementation date to its member organizations via an Information Memorandum.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that adopting the proposed rule at the same time that FINRA implements a substantially similar rule will contribute to investor protection by defining important parameters by which member organizations must abide when trading proprietarily while holding customer limit and market orders, and foster cooperation by harmonizing requirements across self-regulatory organizations.

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[11] and Rule 19b–4(f)(6) thereunder.[12] 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.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–043 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–NYSE–2011–043. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–043 and should be submitted on or before September 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–21656 Filed 8–23–11; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* FINRA Regulatory Notice 11–24.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12744 and #12745]

Nebraska Disaster #NE–00044

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4014–DR), dated 08/12/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 06/19/2011 through 06/21/2011.

EFFECTIVE DATE: 08/12/2011.

Physical Loan Application Deadline Date: 10/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/12/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Buffalo, Chase, Dodge, Furnas, Hamilton, Hayes, Phelps, Polk, Red Willow, York.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12744B and for economic injury is 12745B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–21601 Filed 8–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12740 and #12741]

Texas Disaster #TX–00380

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–1999–DR), dated 08/15/2011.

Incident: Wildfires.

Incident Period: 04/06/2011 through 05/03/2011.

EFFECTIVE DATE: 08/15/2011.

Physical Loan Application Deadline Date: 10/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/15/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fisher, Kent, Moore.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127405 and for economic injury is 127415.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–21602 Filed 8–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12651 and #12652]

Indiana Disaster Number IN–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of *Indiana* (FEMA–1997–DR), dated 06/23/2011 .

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/19/2011 through 06/06/2011.

EFFECTIVE DATE: 08/15/2011.

Physical Loan Application Deadline Date: 08/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/23/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Indiana, dated 06/23/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Clay, Lawrence.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–21603 Filed 8–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12637 and #12638]

Massachusetts Disaster Number MA–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Massachusetts (FEMA–1994–DR), dated 06/15/2011 .

Incident: Severe Storms and Tornadoes.

Incident Period: 06/01/2011.

Effective Date: 08/11/2011.

Physical Loan Application Deadline Date: 08/22/2011.

EIDL Loan Application Deadline Date: 03/15/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

declaration for the State of Massachusetts, dated 06/15/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 08/22/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–21605 Filed 8–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12736 and #12737]

Missouri Disaster #MO–00052

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4012–DR), dated 08/12/2011 .

Incident: Flooding.

Incident Period: 06/01/2011 through 08/01/2011.

Effective Date: 08/12/2011.

Physical loan application deadline date: 10/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/12/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Andrew, Atchison, Buchanan, Holt, Lafayette, Platte.

Contiguous Counties (Economic Injury Loans Only):

Missouri: Carroll, Clay, Clinton, Dekalb, Gentry, Jackson, Johnson, Nodaway, Pettis, Ray, Saline.

Iowa: Fremont, Page.

Kansas: Atchison, Doniphan, Leavenworth, Wyandotte.

Nebraska: Nemaha, Otoe, Richardson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127366 and for economic injury is 127370.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–21607 Filed 8–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12738 and #12739]

Nebraska Disaster #NE–00041

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–4013–DR), dated 08/12/2011.

Incident: Flooding.

Incident Period: 05/24/2011 through 08/01/2011.

EFFECTIVE DATE: 08/12/2011.

Physical Loan Application Deadline Date: 10/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/12/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Boyd, Burt, Cass, Dakota, Dixon, Douglas, Knox, Sarpy, Washington.

Contiguous Counties (Economic Injury Loans Only):

Nebraska: Antelope, Cedar, Cuming, Dodge, Holt, Keya Paha, Lancaster, Otoe, Pierce, Rock, Saunders, Thurston, Wayne.

Iowa: Fremont, Harrison, Mills, Monona, Pottawattamie, Woodbury.

South Dakota: Bon Homme, Charles Mix, Clay, Gregory, Union, Yankton.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127386 and for economic injury is 127390.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–21606 Filed 8–23–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12742 and #12743]

Nebraska Disaster #NE–00043

AGENCY: U.S. Small Business.

ADMINISTRATION ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4013–DR), dated 08/12/2011.

Incident: Flooding.

Incident Period: 05/24/2011 through 08/01/2011.

Effective Date: 08/12/2011.

Physical Loan Application Deadline Date: 10/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/12/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Burt, Cass, Dakota, Douglas, Garden, Knox, Lincoln, Otoe, Sarpy, Scotts Bluff, Thurston, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127426 and for economic injury is 127436.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–21604 Filed 8–23–11; 8:45 am]

BILLING CODE 8025–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting on September 15, 2011, in Milford, New York. At the public hearing, the Commission will consider: (1) Compliance matters involving three projects; (2) the rescission of one docket approval; (3) action on certain water resources projects; and (4) action on three projects involving a diversion. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATES: September 15, 2011, at 8:30 a.m.

ADDRESSES: Country Inn & Suites Cooperstown, 4470 State Highway 28, Milford, New York 13807.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: (1) Expansion of the Remote Water Quality Monitoring Network; (2) hydrologic conditions in the basin; (3) a report on the Morrison Cove Study in the Juniata Subbasin; (4) the Maurice K. Goddard Award to Dr. Willard Harman of the SUNY Biological Station at Oneonta; (5) a possible supplemental proposed rulemaking action; (6) a preliminary introduction to dockets; (7) a capital budget and contract for acquisition of a new SRBC headquarters building; and (8) ratification/approval of grants/contracts. The Commission will also hear Legal Counsel's report.

Public Hearing—Compliance Actions:

1. Project Sponsor: Energy Corporation of America. Pad ID: Coldstream Affiliates #1MH (ABR–201007051 and ABR–201007051.1), Goshen Township, Clearfield County, Pa. and Pad ID: Whitetail #1–5MH (ABR–201008112 and ABR–201008112.1), Goshen and Girard Townships, Clearfield County, Pa.

2. Project Sponsor: Hazleton Creek Properties, LLC. Project Facility: Hazleton Mine Reclamation (Docket No. 20110307), Hazleton City, Luzerne County, Pa.

3. Project Sponsor: Keister Miller Investments, LLC. Withdrawal ID: West Branch Susquehanna River (Docket No. 20100605), Mahaffey Borough, Clearfield County, Pa.

Public Hearing—Project Scheduled for Rescission Action:

1. Project Sponsor and Facility: Lake Meade Municipal Authority (Docket No. 19911102), Reading Township, Adams County, Pa.

Public Hearing—Projects Scheduled for Action:

1. Project Sponsor: Anadarko E&P Company LP. Project Facility: Sproul State Forest—Council Run, Snow Shoe Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.715 mgd from Well PW–11.

2. Project Sponsor: Borough of Ephrata. Project Facility: Ephrata Area Joint Authority, Ephrata Borough, Lancaster County, Pa. Application for groundwater withdrawal of up to 1.210 mgd from Well 1.

3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Modification to increase surface water withdrawal by an additional 0.441 mgd, for a total of 1.44 mgd (Docket No. 20080906).

4. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Modification to increase surface water withdrawal by an additional 0.441 mgd, for a total of 1.44 mgd (Docket No. 20090605).

5. Project Sponsor and Facility: EXCO Resources (PA), LLC (Pine Creek), Porter Township, Lycoming County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

6. Project Sponsor: Graymont (PA), Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.660 mgd from Well I–5 (McJunkin Well Field).

7. Project Sponsor: Hazelton Creek Properties, LLC. Project Facility:

Hazelton Mine Reclamation, Hazelton City, Luzerne County, Pa. Modification to increase consumptive water use approval by 0.145 mgd, for a total of 0.200 mgd (Docket No. 20110307).

8. Project Sponsor and Facility: J–W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Modification to conditions of the surface water withdrawal approval (Docket No. 20090330).

9. Project Sponsor and Facility: M & P Energy Services Inc. (Susquehanna River), Briar Creek Borough, Columbia County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

10. Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, Md. Modification to conditions of the surface water withdrawal approval (Docket No. 20010801).

11. Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, Md. Modification to conditions of the consumptive water use approval (Docket No. 20010801).

12. Project Sponsor: Milton Regional Sewer Authority. Project Facility: Wastewater Treatment Plant, Milton Borough and West Chillisquaque Township, Northumberland County, Pa. Application for withdrawal of treated wastewater effluent of up to 0.864 mgd.

13. Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (West Branch Susquehanna River), Pine Creek Township, Clinton County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

14. Project Sponsor and Facility: Seneca Resources Corporation (Marsh Creek), Delmar Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

15. Project Sponsor and Facility: Southwestern Energy Production Company, Herrick Township, Bradford County, Pa. Application for groundwater withdrawal of up to 0.101 mgd from the Fields Supply Well.

16. Project Sponsor and Facility: Stanley S. Karp Sr. (Tunkhannock Creek), Nicholson Borough, Wyoming County, Pa. Application for surface water withdrawal of up to 0.510 mgd.

17. Project Sponsor and Facility: Susquehanna Gas Field Services, LLC. (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Modification to project features and conditions of the surface water withdrawal approval (Docket No. 20090628).

18. Project Sponsor: Susquehanna Gas Field Services, LLC. Project Facility: Meshoppen Pizza Well, Meshoppen Borough, Wyoming County, Pa. Modification to project features and conditions of the groundwater withdrawal approval (Docket No. 20100612).

19. Project Sponsor and Facility: William C. Wingo (Wingo Ponds), Ulysses Township, Potter County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

20. Project Sponsor and Facility: XTO Energy, Inc. (West Branch Susquehanna River), Chapman Township, Clinton County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

Public Hearing—Projects Scheduled for Action Involving a Diversion:

1. Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, Md. Modification to conditions of the diversion approval (Docket No. 20010801).

2. Project Sponsor: SWEPI, LP. Project Facility: Pennsylvania American Water Company—Warren District, Warren City, Warren County, Pa. Application for an into-basin diversion of up to 3.000 mgd from the Ohio River Basin.

3. Project Sponsor: EQT Production Company. Project Facility: Franco Freshwater Impoundment, Washington Township, Jefferson County, Pa. Application for an into-basin diversion of up to 0.482 mgd from the Ohio River Basin.

Opportunity To Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also 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, *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *e-mail: srichardson@srbc.net.* Comments mailed or electronically submitted must be received prior to September 9, 2011, to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: August 12, 2011.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2011–21569 Filed 8–23–11; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The requested information is included in air carriers applications for insurance when insurance is not available from private sources.

DATES: Written comments should be submitted by October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0514.

Title: Aviation Insurance.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The information submitted by applicants for insurance under Chapter 443 of Title 49 U.S.C. is used by the FAA to identify the eligibility of parties to be insured, the amount of coverage required, and insurance premiums. Without collection of this information, the FAA would not be able to issue required insurance.

Respondents: Approximately 61 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 4 hours.

Estimated Total Annual Burden: 616 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this

information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 18, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–21653 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Activation of Ice Protection Rule—Flight Manual Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. This Paperwork Reduction Act collection is a recordkeeping requirement imposed by the new rule "Part 121 Activation of Ice Protection". The NPRM for that rule was published in the **Federal Register** on November 23, 2009 (74 FR 61055).

DATES: Written comments should be submitted by October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Jones on (425) 227 1234, or by e-mail at: *Robert.C.Jones@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX.

Title: Activation of Ice Protection Rule—Flight Manual Requirements.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Clearance of a new information collection.

Background: To address NTSB safety recommendation A–07–14 as well as the FAA Icing Plan A, and to increase the standard of safety associated with flight in icing conditions, the FAA is issuing a rule for certain airplanes to ensure that pilots will activate their ice protection systems in a timely way. This new rule requires procedures for activation of ice protection, and thus may require operators to revise their airplane flight manual (AFM) or the manual required by § 121.133. Adding these new procedures may require the addition of a page or two to the AFM. This is classified as a record keeping item. No data will be collected. The rule that will require this information is 14 CFR 121.321.

Respondents: 8 airplane operators.

Frequency: One-time requirement.

Estimated Average Burden per Response: 2 hours.

Estimated Total Annual Burden: 16 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 18, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–21660 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Organization Designation Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This information collection involves certain organizations applying to perform certification functions on behalf of the FAA. These function may include approving data, issuing various kinds of aircraft and organization certificates, and other functions.

DATES: Written comments should be submitted by October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0704.

Title: Organization Designation Authorization.

Form Numbers: FAA Forms 8100–11, 8100–12, 8100–13.

Type of Review: Renewal of an information collection.

Background: Subpart D to part 183 establishes the Organization Designation Authorization. This rule allows the Federal Aviation Administration to appoint organizations as representatives of the administrator. As authorized, these organizations perform certification functions on behalf of the FAA. The application form is submitted to the appropriate Federal Aviation Administration (FAA) office by an interested organization. The applications are reviewed by the FAA to determine whether the applicant meets the qualification requirements necessary to be authorized as a representative of the Administrator. Procedures manuals are submitted and approved by the FAA as a means to ensure the organizations utilize the correct processes when performing functions on behalf of the FAA. The management of such activity is provided for in 49 U.S.C. 44702(d). Reporting and recordkeeping requirements are necessary to manage the various approvals issued by the organization. The reporting and recordkeeping requirements are necessary to document approvals issued and must be maintained in order to address future safety issues which may arise.

Respondents: Approximately 83 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 41.7 hours.

Estimated Total Annual Burden: 5,158 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 18, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–21662 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Financial Responsibility for Licensed Launch Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Information is used to determine if licensees have complied with financial responsibility requirements (including maximum probable loss determination) as set forth in FAA regulations.

DATES: Written comments should be submitted by October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0601.

Title: Financial Responsibility for Licensed Launch Activities.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: This collection is applicable upon concurrence of requests for conducting commercial launch operations as prescribed in 14 CFR, Parts 401, *et al.*, Commercial Space Transportation Licensing Regulation. A commercial space launch services provider must complete the Launch Operators License, Launch-Specific License or Experimental Permit in order to gain authorization for conducting commercial launch operations.

Respondents: 6 commercial space launch services providers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 600 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 18, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–21672 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Hazardous Materials Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves requirements for certain repair stations to provide documentation showing that persons handling hazmat for transportation have been trained following DOT guidelines.

DATES: Written comments should be submitted by October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0705.

Title: Hazardous Materials Training Requirements.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: 14 CFR 119.49(a)(13) provides that a certificate holder's operations specifications must include either an authorization permitting the certificate holder to handle and transport hazmat (will-carry certificate holder) or a prohibition against handling and transporting hazmat (will-not-carry certificate holder). The FAA, as prescribed in 14 CFR parts 121 and 135, requires certificate holders to submit manuals and hazmat training programs, or a revision to an approved hazmat training program to obtain initial and final approval as part of the FAA certification process. Original certification is completed in accordance with part 119. Continuing certification is completed in accordance with part 121 and part 135. The FAA uses the approval process to determine compliance of the hazmat training programs with the applicable regulations, national policies and safe operating practices. The FAA must ensure that the documents adequately establish safe operating procedures.

Respondents: Approximately 2,772 operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 7 hours.

Estimated Total Annual Burden: 6,900 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be

minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Dated: August 18, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–21665 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: FAA Airport Master Record

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The Airport Safety Data Program involves the collection and dissemination of civil aeronautics information.

DATES: Written comments should be submitted by October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0015.

Title: FAA Airport Master Record.

Form Numbers: FAA Forms 5010–1, 5010–2, 5010–3, 5010–5.

Type of Review: Renewal of an information collection.

Background: 49 U.S.C. 329(b) empowers and directs the Secretary of Transportation to collect and disseminate information on civil aeronautics. Aeronautical information is required to be collected by the FAA in order to carry out agency missions such as those related to aviation flying safety, flight planning, airport engineering and federal grants analysis, aeronautical chart and flight information publications, and the promotion of air commerce as required by statute.

Respondents: Approximately 19,800 airport owners/managers and state inspectors.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 8,870 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Dated: August 18, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–21658 Filed 8–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before September 23, 2011 to be assured consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0146.

Type of Review: Extension without change of a currently approved collection.

Title: Election by a Small Business Corporation.

Form: 2553.

Abstract: Form 2553 is filed by a qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 8,190,000.

OMB Number: 1545–0731.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8600 Definition of an S Corporation.

Abstract: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed would be used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,005.

OMB Number: 1545–0988.

Type of Review: Revision of a currently approved collection.

Title: Form 8609, Low-Income Housing Credit Allocation Certification; Form 8609–A, Annual Statement for Low-Income Housing Credit.

Forms: 8609, 8609–A.

Abstract: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 can be used to obtain a housing credit allocation from the housing credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,090,332.

OMB Number: 1545–1374.

Type of Review: Revision of a currently approved collection.

Title: Qualified Electric Vehicle Credit.

Form: 8834.

Abstract: Form 8834 is used to compute an allowable credit for qualified electric vehicles placed in service after June 30, 1993. Section 1913(b) under Public Law 102–1018 created new section 30.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,025.

OMB Number: 1545–1570.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8905—Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

Abstract: This document contains final regulations relating to the due diligence requirements under section 6695(g) of the Internal Revenue Code for paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC). These regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The regulations provide guidance to paid preparers who prepare Federal income tax returns or claims for refund claiming the earned income credit.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 507,136.

OMB Number: 1545–1672.

Type of Review: Extension without change of a currently approved collection.

Title: T.D 9047—Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

Abstract: This document contains final regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or a Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 70.

OMB Number: 1545–1780.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 9472—Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual.

Abstract: This document contains final regulations providing guidance relating to the application of the section 204(h) notice requirements to a pension plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. These regulations also reflect certain amendments made to the section 204(h) notice requirements by the Pension Protection Act of 2006. These final regulations generally affect sponsors, administrators, participants, and beneficiaries of pension plans.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 40,000.

OMB Number: 1545–1914.

Type of Review: Extension without change of a currently approved collection.

Title: Low Sulfur Diesel Fuel Production Credit.

Form: 8896.

Abstract: IRC section 45H allows small business refiners a 5 cent/gallon credit for the production of low sulfur diesel fuel.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 313.

OMB Number: 1545–2086.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2008–113; Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a) in Operation.

Abstract: This Notice sets forth the procedures to be followed by service recipients and service provides in order to correct certain operational failures of a nonqualified deferred compensation plan to comply with § 409A(a). It also describes the types of operational failures that can be corrected under the Notice.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,000.

OMB Number: 1545–2089.

Type of Review: Extension without change of a currently approved collection.

Title: Report of Employer-Owned Life Insurance Contracts.

Form: 8925.

Abstract: IRC 6039I requires every policyholder of employer-owned life insurance contracts to file a return showing the number of contracts owned, the total number of employees at the end of the year, the number of such employees insured, and that the policyholder has a valid consent for each insured employee. Form 8925 will be used to report this information.

Respondents: Private Sector: Businesses or other for-profits, Farms, Not-for-profit institutions.

Estimated Total Burden Hours: 71,360.

OMB Number: 1545–2205.

Type of Review: Extension without change of a currently approved collection.

Title: Merchant Card and Third Party Payments.

Form: 1099–K.

Abstract: This form is in response to section 3091(a) of Public Law 110–289, the Housing Assistance Tax Act of 2008 (Div. C of the Housing and Economic Recovery Act of 2010). The form reflects payments made in settlement of merchant card and third party network transactions for purchases of goods and/or services made with merchant cards and through third party networks.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 620.

OMB Number: 1545–2206.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2011–44—Application for Reinstatement and Retroactive Reinstatement for Reasonable Cause under IRC § 6033(j); Notice 2011–43—Transitional Relief under IRC § 6033(j) for Small Organizations.

Abstract: Notice 2011–44 provides guidance with respect to applying for reinstatement of tax-exempt status and requesting retroactive reinstatement under sections 6033(j)(2) and (3) of the Internal Revenue Code for an organization that has had its tax-exempt status automatically revoked under section 6033(j)(1) of the Code. The Treasury Department and the Internal Revenue Service intend to issue regulations under section 6033(j) that will prescribe rules relating to the application for reinstatement of tax-exempt status under section 6033(j)(2) and the request for retroactive reinstatement under section 6033(j)(3).

Notice 2011–43 provides transitional relief for certain small organizations that have lost their tax-exempt status because they failed to file a required annual electronic notice (Form 990–N e-Postcard) for taxable years beginning in 2007, 2008 and 2009. A small organization—that is, one that normally has annual gross receipts of not more than $50,000 in its most recently completed taxable year—that qualifies for the transitional relief under this notice and applies for reinstatement of tax-exempt status by December 31, 2012, will be treated by the Internal Revenue Service as having established reasonable cause for its filing failures and its tax-exempt status will be reinstated retroactive to the date it was automatically revoked.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,917.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–21593 Filed 8–23–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

Census Bureau

Urban Area Criteria for the 2010 Census; Notice

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 110714393–1393–01]

Urban Area Criteria for the 2010 Census

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of final program criteria.

SUMMARY: This notice announces the Bureau of the Census' (hereafter, Census Bureau's) final criteria for defining urban areas based on the results of the 2010 Decennial Census (the term "urban area" as used throughout this notice refers generically to urbanized areas of 50,000 or more population and urban clusters of at least 2,500 and less than 50,000 population). This notice also provides a summary of comments received in response to proposed criteria published in the August 24, 2010, **Federal Register** (75 FR 52174), as well as the Census Bureau's response to those comments.

The Census Bureau's urban-rural classification is fundamentally a delineation of geographic areas, identifying both individual urban areas and the rural areas of the nation. The Census Bureau's urban areas represent densely developed territory, and encompass residential, commercial, and other nonresidential urban land uses. The Census Bureau delineates urban areas after each decennial census by applying specified criteria to decennial census and other data. Since the 1950 Census, the Census Bureau has reviewed and revised these criteria, as necessary, for each decennial census. The revisions over the years reflect the Census Bureau's desire to improve the classification of urban and rural territory to take advantage of newly available data, as well as advancements in geographic information processing technology.

DATES: *Effective Date:* The Census Bureau will begin implementing the criteria as of August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Vincent Osier, Chief, Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at *vincent.osier@census.gov* or telephone at (301) 763–3056.

SUPPLEMENTARY INFORMATION: The Census Bureau's delineation of urban areas is designed to identify densely developed territory, and encompass residential, commercial, and other nonresidential urban land uses. The boundaries of this "urban footprint" have been defined using measures based primarily on population counts and residential population density, but also through criteria that account for nonresidential urban land uses, such as commercial, industrial, transportation, and open space that are part of the urban landscape. Since the 1950 Census, when densely settled urbanized areas (UAs) of 50,000 or more people were first defined, the urban area delineation process has addressed nonresidential urban land uses through criteria designed to account for commercial enclaves, special land uses such as airports, and densely developed noncontiguous territory.

In delineating urban areas and the resultant classification of territory outside these urban areas as rural, the Census Bureau does not take into account or attempt to meet the requirements of any nonstatistical uses of these areas or their associated data. Nonetheless, the Census Bureau recognizes that other government agencies use the Census Bureau's urban-rural classification for allocating program funds, setting program standards, and implementing aspects of their programs. The agencies that use the classification and data for such nonstatistical purposes should be aware that the changes to the urban area criteria might affect the implementation of their programs.

The Census Bureau is not responsible for the use of its urban-rural classification in nonstatistical programs. If a federal, tribal, state, or local government agency voluntarily uses the urban-rural classification in a nonstatistical program, it is that agency's responsibility to ensure that the classification is appropriate for such use. In considering the appropriateness of the classification for use in a nonstatistical program, the Census Bureau urges each government agency to consider permitting appropriate modifications of the results of implementing the urban-rural classification specifically for the purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to describe and clearly identify the different criteria being applied to avoid confusion with the Census Bureau's official urban-rural classifications.

I. Summary of Changes Made to the 2010 Census Urban Area Criteria

The following table compares the final 2010 Census delineation of urban areas criteria with the provisions that were proposed in the August 24, 2010, **Federal Register** (75 FR 52174).

Criteria	Proposed 2010 Census criteria	Final 2010 Census criteria
Identification of Initial Urban Area Cores.	Census tract and block population density, count, and size thresholds. Use of National Land Cover Database to identify territory with a high degree of impervious land cover.	Census tract and block population density, count, and size thresholds. Use of National Land Cover Database to identify territory with a high degree of impervious land cover.
Inclusion of Noncontiguous Territory Separated by Exempted Territory.	Bodies of water and wetlands as identified in the National Land Cover Database.	Bodies of Water.
Inclusion of Noncontiguous Territory via Hops and Jumps.	Maximum hop distance 0.5 miles, maximum jump distance 2.5 miles, and no hops after jumps. Solicited comment on returning to the maximum jump distance of 1.5 miles implemented for pre-Census 2000 delineations.	Maximum hop distance 0.5 miles, maximum jump distance 2.5 miles, and no hops after jumps.
Inclusion of Enclaves	Two types of enclaves are identified when surrounded solely by qualifying land territory, and one type of enclave can be included when surrounded by both land that qualified for inclusion in the urban area and water.	Two types of enclaves are identified when surrounded solely by qualifying land territory, and one type of enclave can be included when surrounded by both land that qualified for inclusion in the urban area and water.

Criteria	Proposed 2010 Census criteria	Final 2010 Census criteria
Splitting Large Urban Agglomerations.	The urban agglomeration encompasses at least 1,000,000 people. Split occurs at the metropolitan statistical area boundary (or metropolitan New England city and town area), and compensates for incorporated place and census designated place boundaries to attempt to avoid splitting places between urban areas.	The agglomeration consists of urbanized areas defined separately for Census 2000. Split location is guided by location of Census 2000 urbanized area boundaries. Potential split locations will also consider metropolitan statistical area, county, place, and/or minor civil division boundaries as well as distance from each component urbanized area.
Merging Individual Urban Areas.	N/A	Merge qualifying territory from separately defined 2010 Census urban cores that share territory contained within the boundaries of the same Census 2000 urban area. Merge only occurs if an area is at risk of losing urbanized area or urban status and is preventable by the merge.
Inclusion of Indentations	5 square mile maximum area of the territory within the indentation to be added to the urban area.	3.5 square mile maximum area of the territory within the indentation to be added to the urban area.
Inclusion of Airports	Annual enplanement of at least 2,500 passengers and be contiguous to the urban area.	Currently functioning airport with an annual enplanement of at least 2,500 passengers and is within 0.5 miles to the urban area.
Additional Nonresidential Urban Territory.	N/A	Inclusion of groups of census blocks with a high degree of impervious surface and are within 0.25 miles of an urban area.
Assigning Urban Area Titles	Clear, unambiguous title based on commonly recognized place names derived from incorporated places, census designated places, minor civil divisions, and the Geographic Names Information System.	Clear, unambiguous title based on commonly recognized place names derived from incorporated places, census designated places, minor civil divisions, and the Geographic Names Information System.
Minimum Population Residing Outside Institutional Group Quarters.	At least 1,500 persons must reside outside institutional group quarters for the area to qualify as its own urban area.	At least 1,500 persons must reside outside institutional group quarters for the area to qualify as its own urban area.
Density Criteria for Military Installations.	Census blocks on military installations with 2,500 or more persons are automatically given a population density of 1,000 persons per square mile; census blocks between 1,000 and 2,500 population are automatically given a population density of 500 persons per square mile.	N/A.

Throughout this **Federal Register** Notice and the urban area criteria for the 2010 Census, the Census Bureau uses the term "contiguous" where the term "adjacent" was used in the proposed 2010 urban area criteria.

II. History

Over the course of more than a century of defining urban areas, the Census Bureau has introduced conceptual and methodological changes to ensure that the urban-rural classification keeps pace with changes in settlement patterns and with changes in theoretical and practical approaches to interpreting and understanding the definition of urban areas. Prior to the 1950 Census, the Census Bureau primarily defined "urban" as any population, housing, and territory located within incorporated places with a population of 2,500 or more, but with the additional allowances to classify certain New England towns and other areas urban by "special rule". That definition was easy and straightforward to implement, requiring no need to calculate population density, to understand and account for actual settlement patterns on the ground in relation to boundaries of administrative units, or to consider densely settled populations existing outside incorporated municipalities. For much of the first half of the twentieth century, that definition was adequate for defining "urban" and "rural" in the United States, but by 1950 it became clear that it was incomplete.

Increasing suburbanization, particularly outside the boundaries of large incorporated places led the Census Bureau to adopt the Urbanized Area (UA) concept for the 1950 Census. At that time, the Census Bureau formally recognized that densely settled communities outside the boundaries of large incorporated municipalities were just as "urban" as the densely settled population inside those boundaries and the large unsettled or sparsely settled areas inside those boundaries were just as "rural" as those outside. Due to the limitations in technology for calculating and mapping population density, delineation of UAs was limited to cities of at least 50,000 people (in the 1940 Census) and their surrounding territory. The geographic units used to analyze settlement patterns were enumeration districts (similar to census block groups), but to facilitate and ease the delineation process, each incorporated place was analyzed as a single unit—that is, the overall density of the place was calculated and if it met the minimum threshold, it was included in its entirety in the UA. Outside UAs, "urban" was still defined as any place with a population of at least 2,500. The Census Bureau recognized the need to identify distinct unincorporated communities existing outside the UAs, and thus created the "census designated place" (CDP) [1] and designated those with populations of at least 2,500 as urban.

Starting with the 1960 Census and continuing through the 1990 Census, the Census Bureau made a number of changes to the methodology and criteria for defining UAs, but retained the 1950 Census basic definition of "urban" which was defined as UAs with a population of 50,000 or more and defined primarily on the basis of population density, as well as places with a population of 2,500 or more located outside UAs. The enhancements made by the Census Bureau to the methodology and criteria used during this period included:

[1] A CDP is a statistical geographic entity encompassing a concentration of population, housing, and commercial structures that is clearly identifiable by a single name, but is not within an incorporated place. CDPs are the statistical geography counterparts of incorporated places.

(1) Lowering, and eventual elimination, of minimum population criteria for places that formed the "starting point" for delineating a UA. This made recognition of population concentrations independent of the size of any single place within the concentration.

(2) Identification of "extended cities"—incorporated places containing substantial amounts of territory with very low population density, which were divided into urban and rural components using 100 persons per square mile (ppsm) as the density criterion. This kept the extent of urban territory from being artificially exaggerated by sparsely settled and overbounded incorporated places.

(3) Implementation for the 1990 Census of nationwide coverage by census blocks, and use of interactive analysis of population density patterns at the census block level, or by groups of blocks known as "analysis units," using Census Bureau-developed delineation software. This enhancement allowed greater flexibility when analyzing and defining potential UAs, as opposed to using enumeration districts and other measurement units defined prior to decennial census data tabulation.

(4) Implementation of qualification criteria for incorporated places and CDPs for inclusion within a UA based on the existence of a densely populated "core" containing at least fifty percent of the place's population. This eliminated certain places from the urban area classification because much of their population was scattered rather than concentrated.

For the 2000 Census (Census 2000), the Census Bureau took advantage of technological advances associated with geographic information systems (GIS) and spatial data processing to classify urban and rural territory on a more consistent and nationally uniform basis than had been possible previously. Rather than delineating urban areas in an interactive and manual fashion, the Census Bureau developed and utilized software that automated the examination of population densities and other aspects of the criteria. This new automated urban area delineation methodology provided for a more objective application of criteria compared to previous censuses in which individual geographers applied the urban area criteria to delineate urban areas interactively. This new automated approach also established a baseline for future delineations to enable the Census Bureau to provide comparable data for subsequent decades.

Changes for Census 2000

The Census Bureau adopted six substantial changes to its urban area criteria for Census 2000:

(1) *Defining urban clusters.* Beginning with Census 2000, the Census Bureau created and implemented the concept of an urban cluster. Urban clusters (UCs) are defined as areas of at least 2,500 and less than 50,000 persons using the same residential population density-based criteria as applied to UAs. This change provided for a conceptually consistent, seamless classification of urban territory. For previous censuses, the lack of a density-based approach for defining urban areas of less than 50,000 persons resulted in underbounding of urban areas where densely settled populations existed outside place boundaries or overbounding when cities included territory with low population density. Areas where annexation had lagged behind expansion of densely settled territory, or where communities of 2,500 up to 50,000 people were not incorporated and were not defined as CDPs, were most affected by the adoption of density-based UCs. As a result of this change, the Census Bureau no longer needed to identify urban places located outside UAs for the purpose of its urban-rural classification.

(2) *Disregarding incorporated place and CDP boundaries when defining UAs and UCs.* Taking place boundaries into account in previous decades resulted in the inclusion of territory with low population density within UAs when the place as a whole met minimum population density requirements, and excluded densely settled population when the place as a whole fell below minimum density requirements. Implementation of this change meant that territory with low population density located inside place boundaries (perhaps due to annexation, or the way in which a CDP was defined) no longer necessarily qualified for inclusion in an urban area. However, it also meant that nonresidential urban land uses located inside a place's boundary and located on the edge of an urban area might not necessarily qualify to be included in a UA or UC.

(3) *Adoption of 500 persons per square mile (ppsm) as the density criterion for recognizing some types of urban territory.* The Census Bureau adopted a 500 ppsm population density threshold at the same time that it adopted its automated urban area delineation methodology. This ensured that census blocks that might contain a mix of residential and nonresidential urban uses, but might not have a population density of at least 1,000 ppsm, could qualify for inclusion in an urban area. For the 1990 Census, geographers could interactively modify analysis units to include census blocks with low population density that might contain nonresidential urban uses, while still achieving an overall population density of at least 1,000 ppsm. Adoption of the lower density threshold facilitated use of the automated urban area delineation methodology, and provided for comparability with the 1990 methodology. This change did not result in substantial increases to the extent of urban areas.

(4) *Increase in the jump distance from 1.5 to 2.5 miles.* The Census Bureau increased the jump distance from 1.5 to 2.5 miles. A "jump" is the distance across territory with low population density separating noncontiguous qualifying territory (area of high population density) from the main body of an urban area. The increase in the jump distance was a result of changing planning practices that led to the creation of larger clusters of single-use development. In addition, research conducted prior to Census 2000 showed that some jumps incorporated in UA definitions in 1990 were actually longer than 1.5 miles as a result of the subjective identification of the gap in developed territory. As used in previous censuses, only one jump was permitted along any given road connection.

(5) *Introduction of the hop concept to provide an objective basis for recognizing small gaps within qualifying urban territory.* For Census 2000, the Census Bureau officially recognized the term "hops," which is defined as gaps of 0.5 mile or less between qualifying urban territory. Hops are used primarily to account for territory in which planning and zoning processes resulted in alternating patterns of residential and nonresidential development over relatively short distances. This provided for a more consistent treatment of short gaps with low population density, some of which had been treated as jumps in the 1990 urban area delineation process (and not permitted if identified as a second jump), while others were interpreted as part of the pattern of urban development and grouped with contiguous, higher density blocks to form qualifying analysis units.

(6) *Adoption of a zero-based approach to defining urban areas.* The urban area delineation process in previous censuses had generally been an additive process, where the boundary of a UA from the previous census provided the starting point for review for the next census. The changes made for Census 2000 were substantial enough to warrant

the Census Bureau to re-evaluate the delineation of all urban areas as if for the first time, rather than simply making adjustments to the existing boundary. The Census Bureau adopted this zero-based approach to ensure that all urban areas were nationally defined in a consistent manner.

The six changes described above represent the major modifications implemented for Census 2000. They illustrate a substantial shift in approach adopted by the Census Bureau in its procedure for delineating urban areas. The availability of new datasets and continued research since Census 2000 showed the potential for further improvements for the 2010 Census.

III. Summary of Comments Received in Response to Proposed Criteria

The notice published in the August 24, 2010 **Federal Register** (75 FR 52174) and requested comments on proposed criteria for the 2010 Census urban areas. In response, the Census Bureau received 179 comment letters from regional planning and nongovernmental organizations, municipal and county officials, Members of Congress, state governments, federal agencies, and individuals.

Comments Pertaining to Proposed Criteria for Splitting Large Urban Agglomerations

The proposed criteria for splitting large agglomerations formed during the delineation process drew the largest number of comments. Of the 179 responses received, 160 commented on the proposed criteria for splitting large agglomerations. Of these, 102 commenters expressed concern about the potential merger of specific pairs of urban areas, with 87 commenters expressing concern about the impact on planning and policymaking as well as the potential loss of federal funding as a result of the loss of individual UA status. Other commenters expressed concern about the loss of local control over funding allocation and policy decisions, lack of consistency with the Census 2000 urban classification, and loss of meaningful data.

Twenty-five commenters supported splitting large urban agglomerations along metropolitan statistical area boundaries or (in New England) New England city and town area (NECTA) boundaries. Ten also supported the proposal to avoid splitting incorporated places and CDPs between urban areas. Six of the comments suggested splitting urban areas along NECTA Division in New England where available or Primary Metropolitan Statistical Area boundaries (although the latter are no longer defined by the Office of Management and Budget). Thirteen commenters specifically suggested basing the urban agglomeration splits on the location of the current urban area boundaries; those commenters who expressed favor for maintaining separate UA status for areas identified as part of potential agglomerations can be assumed to favor splitting along Census 2000 UA boundaries. Five commenters advocated the use of commuting data to determine how and where to split large agglomerations. Twenty-six commenters favored splitting urban agglomerations within metropolitan statistical areas, with some wondering whether the lack of such a provision in the proposed criteria was an oversight.

The Census Bureau received sixty-five comments regarding the minimum population threshold to identify which urban agglomerations should be split. Of these, six commenters favored the proposed 1,000,000 person threshold. Thirty commenters favored a 250,000 person threshold and eleven commenters suggested keeping the 50,000 person threshold implemented for the Census 2000 delineation. Among other suggested minimum population thresholds, commenters also suggested using a threshold consistent with Federal Transit Administration and Federal Highway Administration funding thresholds, or no minimum population threshold at all.

In addition to requests for clarification, the Census Bureau also received comments expressing concern about the arbitrary nature of the proposed criteria for splitting and merging urban areas as well as a lack of local input. Other suggestions include the identification of combined urban areas through commuting patterns, examining each urban agglomeration individually to determine the location of each split boundary, defining agglomeration splits along county and sub-county boundaries, and retaining the current split boundaries defined for the Census 2000 delineation.

In response to the comments regarding criteria for splitting large agglomerations, the Census Bureau will adopt criteria ensuring that urbanized areas defined for Census 2000 continue to be identified as separate urbanized areas for the 2010 Census, but only if these areas continue to qualify as urbanized under the 2010 urban area delineation criteria. The boundary used to split large agglomerations will be based on the locations of Census 2000 urban area boundaries. To the extent possible, this will facilitate continuity and comparability between the Census 2000 and the 2010 Census urban area definitions.

Comments Pertaining to Proposed Hop and Jump Criteria

The Census Bureau received seventy-five comments regarding the proposed hop and jump criteria designed to include noncontiguous, but qualifying territory within an urban area. Of these, forty commenters suggested lowering the maximum jump distance threshold from 2.5 to 1.5 miles. These commenters suggested that, in addition to preventing the consolidation of functionally separate urban areas, a shorter maximum jump distance would improve the overall delineation by preventing inclusion in the urban area of long stretches of qualifying territory that are more appropriately classified as rural, especially with the presence of large expanses of exempted territory and long distance commuting patterns. Further, one commenter expressed concern that retaining the existing 2.5-mile maximum jump threshold indicates that the Census Bureau has moved away from a morphological concept of urban towards one based on function relationships.

Thirty-three commenters favored no change to the 2.5 mile maximum jump distance threshold. Reasons for retention of the 2.5 mile maximum jump distance provided by these commenters included retaining consistency with the Census 2000 urban area delineation, the ability to account for future urbanization and extended suburbanization, and mitigation of the presence of undevelopable land not identified by the Census Bureau. One commenter suggested that the 2.5 maximum jump distance allowed is too restrictive in coastal areas where large areas of wetlands are present, even if such territory is identified as exempted. One commenter suggested different maximum jump thresholds should be applied to urban areas of different population sizes, with longer jumps allowed for larger initial urban cores.

Three commenters expressed concern that the proposed criteria do not allow for a second iteration of hops after jumps; one commenter agreed with the proposal to not allow hops after a jump had been made. Two commenters requested clarification on the sequence of hops and jumps in relation to the identification of airports, wondering whether it is possible to hop or jump from an urban area to additional qualifying territory if airports are included in the urban area after the hop and jump criteria have been implemented. One commenter suggested that all intervening census

blocks separating an initial urban core and its noncontiguous qualifying territory must have a minimum population density of at least 500 ppsm. One commenter suggested not allowing multiple hops, and another opposed including any noncontiguous densely settled territory via hops and jumps.

Based on the comments received as well as a general desire to maintain comparability between the Census 2000 and 2010 Census criteria, the Census Bureau will continue to use the maximum jump distance of 2.5 miles, as well as the maximum hop distance of 0.5 miles. The Census Bureau notes that the comments pertaining to the maximum distance of a jump did not strongly favor either retention of the 2.5-mile maximum jump distance implemented for the Census 2000 or reversion to the 1.5 mile maximum of previous decades. In response to concerns that application of the hop and jump criteria allows urban areas to reach too far into rural territory, the Census Bureau will not allow for a second iteration of hops after a jump. The Census Bureau will also retain the proposed requirement for an overall density of at least 500 ppsm for all noncontiguous qualifying territory (both the high density destination and intervening territory).

Comments Pertaining to Proposed Criteria for Identifying and Linking Across Exempted Territory

The Census Bureau received thirty-three comments pertaining to the proposed criteria for recognizing territory in which urban development is constrained due to either topographic or land cover/land use conditions during the inclusion of noncontiguous, but qualifying urban territory. Sixteen commenters agreed with the proposed criteria to identify wetlands as exempted territory in addition to water features, national parks, and national monuments as was done for the Census 2000 delineation. Five of these commenters, however, suggested that wetlands only be identified as exempt if the maximum jump distance was lowered to 1.5 miles. In addition to identifying wetlands as exempted territory, five commenters suggested additional classes of land cover restricting development, such as farmland, forested land, conservation easement properties, and steeply sloped territory in which mountain passes are present. Although still in agreement with the identification of wetlands as exempted territory, commenters expressed additional concerns regarding the vintage of the 2001 National Land Cover Database (NLCD) developed by the Multi-Resolution Land Characteristics Consortium (MRLC)[2] and suggested using the NLCD 2006 update as well as incorporating additional wetlands datasets based on ground-truth samples, more current imagery, and/or projection models, and locally produced surface data where available. Commenters also expressed concern about the objectivity in determining whether these territories will not be developed as well as not be included in the overall population density calculation of urban areas.

Five commenters opposed the identification of wetlands as exempted territory, citing NLCD data vintage and quality, the compatibility of the NLCD to data within the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) database (MTDB), lack of local input in defining wetlands, and the proper vetting of NLCD prior to inclusion in the criteria as issues of concern. Commenters also suggested that the combination of wetlands and water features as exempted territory with a 2.5-mile maximum jump distance threshold exaggerates the amount of urban territory defined and noted that only considering wetlands as exempted does not account for other types of land cover/uses that act as barriers to urban development. One commenter also questioned how close wetlands territory must be to road segments as well as why it is necessary to be located on both sides of the road, to be considered exempted territory.

The Census Bureau received three comments opposing the identification of water features as exempted territory suggesting that wide expanses of water should clearly separate urban areas. One commenter suggested the use of Radio Detection And Ranging (RADAR) mapping to better identify water landscape features as exempted territory. Three commenters opposed the identification of all exempted territory in the urban area delineation criteria. These commenters suggested that the exempted territory criteria allow for the extension of urban areas across county boundaries, which is counter to the overall intent for defining urban areas by the Census Bureau. Note that the Census Bureau's urban area criteria have always allowed for the extension of urban area boundaries across the county boundaries. Other commenters suggested adding floodplains, regional parks, national wildlife areas, steeply sloped terrain, and other defined open space with restricted development properties as exempted territory classes.

In response to the comments received, the Census Bureau will continue to take into account exempted territory when delineating urban areas, as it has for several decades. The Census Bureau will also continue to only consider conditions where exempted territory is on both sides of a road, otherwise development would not be fully constrained. However, based on concerns raised by commenters and to maintain decennial comparability, for the 2010 Census urban area delineation, bodies of water included in the Census Bureau's MTDB will be the only specific class of territory identified as exempted. Similar to the Census 2000 delineation criteria, additional exempted territory will include land area in which the populations of the census blocks on both sides of a road segment are zero and the road connection crosses at least 1,000 feet of water. This methodology is designed to identify unpopulated wetlands and floodplains adjacent to water that separate areas of urban development. Nonetheless, the Census Bureau decided to break from the Census 2000 delineation criteria by not considering national parks and national monuments as exempted territory because of concerns regarding the data quality and vintage. The Census Bureau also decided not to include any of the proposed wetlands classes in the category of exempted territories. The presence of large expanses of wetlands territory coupled with a maximum jump distance threshold of 2.5 miles would facilitate the over extension of urban territory in certain locations around the nation. The consideration of wetlands as exempted territory imparts a regional bias to the delineation process due to the greater prominence of wetlands in some parts of the country, such as the southern and southeastern United States. The Census Bureau has decided against adding additional classes of exempted territory until a larger and more robust category of land cover/land use types acting as barriers to urban development can be identified consistently and uniformly for the entire United States and Puerto Rico.

Comments Pertaining to Proposed Criteria To Qualify Territory Containing a High Degree of Impervious Surface Land Cover

Twenty-three commenters responded to the proposed use of the NLCD to assist in identifying and qualifying as urban, sparsely populated urban-related territory associated with a high degree

[2] The NLCD includes data for the entirety of the United States, Puerto Rico, and the U.S. Virgin Islands.

of impervious surface land cover. Eighteen comments favored adoption of the proposal to qualify territory based on the percentage of impervious surfaces. Ten commenters, however, expressed concern about the vintage of the data, questioning the relevance of using the 2001 NLCD as it is more representative of urban conditions at the time of Census 2000 and does not account for subsequent development. Commenters suggested using the NLCD 2006 update, supplemental land cover/land use datasets based on ground-truth samples, more current imagery, and/or projection models, as well as local opinion and locally produced surface data, where available. Five commenters who favored using impervious surface data conditioned their support on the premise that the maximum jump distance threshold should revert to 1.5 miles to prevent the over extension of urban territory. Other commenters expressed concern about the overall quality of the NLCD, how well these data match data in the MTDB, that introduction of these data were not properly vetted, and requested that the Census Bureau provide public products merging impervious surface data with information for census blocks.

After considering the comments received, the Census Bureau, as described in the proposed criteria, will include impervious surface data when delineating urban areas as a means to identify business districts, commercial, and industrial zones, located both on the edge and in the interior of an urban area that would not qualify as urban based on residential population measures alone. In response to the comments, the Census Bureau will use the 2006 NLCD update wherever available and will use the 2001 NLCD in areas of the Nation not yet covered by the 2006 NLCD update in its efforts to promote a more publicly replicable urban area delineation. For the 2010 Census urban area delineation, the most consistent, comprehensive, and accessible impervious surface database for the United States and Puerto Rico is the NLCD.

Comments Pertaining to Proposed Use of Census Tracts as Building Blocks

The Census Bureau received twenty-one comments regarding the proposed use of the census tract as the analysis unit (or geographic building block) during the delineation of the initial urban area core. Of these, sixteen commenters favored the proposal. Three commenters also supported the use of census tracts as analysis units, but suggested modifications to the initial urban core delineation criteria. These commenters expressed concern that the minimum population density threshold of 500 ppsm was too high, proposed increasing the maximum land area threshold to four square miles, and suggested applying the Census 2000 block group-based delineation criteria after using census tracts as analysis units to capture lower density territory in mountainous areas resulting from census geography primarily being defined along visible features. The two letters opposing the use of census tracts as analysis units both questioned the relevance of this criterion when delineation of initial urban cores also occurs at the census block level. An additional concern was about the reduced population density measurements resulting from the inclusion of water area in census tracts (although population density is based only on land area). One letter requested clarification on the iterative nature of the initial urban core building process once the delineation criteria moves down to the census block level.

In response to the comments received regarding these criteria, the Census Bureau will replace census block groups with census tracts as the analysis unit during the delineation of the initial urban area core for the 2010 Census urban area delineation as described in the proposed criteria. Changing the urban area core delineation analysis unit to the census tract offers advantages of increased consistency and comparability, since census tracts are more likely to retain their boundaries over the decades than census blocks and block groups. The Census Bureau decided to retain the minimum 500 ppsm threshold to maintain comparability with the Census 2000 urban area delineation. This population density threshold was chosen to allow the Census Bureau to account for the inclusion of open space and other nonresidential urban uses within census tracts and blocks that also contain residential development. The Census Bureau also decided not to adopt the suggested maximum census tract size criterion of four square miles and to include a maximum census tract size criterion of three square miles to avoid adding large amounts of sparsely settled territory to urban areas. Water area, as depicted in the Census Bureau's MTDB, has never been included in population density calculations for the urban area delineation program.

Research by the Census Bureau has indicated that the initial urban cores tend to experience slight decreases in territory and only slight increases in population qualifying as urban when the initial analysis unit is changed from the block group to the census tract. The small reduction in initial urban area core territory is due to the use of census tracts, which are larger geographic units and therefore less likely than block groups to qualify under the density requirements. Similar to the way block groups were used for Census 2000, if a census tract does not meet specified area measurement and density criteria, the focus of analysis will shift to individual census blocks within the tract, and delineation will continue at the block level. As a result, when using census tracts, the delineation process shifts to census block-level analysis sooner than would be the case when using block groups. This methodology is iterative as additional qualifying census tracts and blocks are added to the initial urban core until no such qualifying territory exists during this phase of the delineation.

Comments Pertaining to Proposed Criteria for Inclusion of Enclaves and Indentations

The Census Bureau received six comments regarding proposed criteria for inclusion of territory in indentations and enclaves formed during the delineation process. Three commenters supported the proposed criteria for including indentations, by way of criteria similar to those implemented for the Census 2000, citing the jagged nature of the current urban area boundaries. Conversely, one commenter opposed the indentation criteria if the only purpose was to produce a more cartographically pleasing depiction of boundaries. One commenter suggested modifying the enclave criteria by lowering the maximum area threshold of five square miles and requiring the majority of the enclave boundary to border territory qualifying as urban. One commenter questioned if these criteria are still necessary.

In response to the comments received regarding the criteria for the inclusion of enclaves and indentations, the Census Bureau decided not to make any changes to the proposed enclave and indentation criteria to maintain comparability from one decade to another. In situations where an enclave is identified and is contiguous to both qualifying territory and a water feature, the territory within the enclave can only be captured if the line of contiguity with the qualifying territory is greater than the line of contiguity with the water feature. These criteria are designed to qualify internal and fringe territory that may not qualify as urban due to large census blocks with a substantial presence of open space (parks, golf

courses, *etc.*) but should be considered part of the urban footprint.

Comments Pertaining to Proposed Criteria for Inclusion of Airports

The Census Bureau received ten comments pertaining to the proposed criteria for including airports in urban areas; all ten agreed with the proposal to include census blocks in their entirety approximating the territory encompassed by major airports. One commenter, however, disagreed with the proposal to lower the minimum enplanement threshold to 2,500 passengers, noting that commercial hubs are better represented than facilities with a mixture of charter or business flights and joint-use (military/general aviation) airports according to commercial enplanements only. This commenter also suggested that the criteria should take into consideration the number of flights. Two commenters favored the inclusion of cargo flights in addition to general aviation enplanements when identifying airports according to the minimum enplanement threshold. Another commenter noted that more recent enplanement data (2009) are available through the Federal Aviation Administration (FAA) than were referenced in the proposed criteria. Additional comments included requests for data content clarification such as whether the data include commercial only, military activities, or all enplanements, as well as whether the Census Bureau will consider cargo weight in identifying major airports. The Census Bureau also received one comment requesting the recognition of rail yards, sea ports, and utilities facilities as qualifying as urban territory in addition to airports.

Upon considering the comments received, the Census Bureau will retain the Census 2000 criteria to include whole census blocks representing airports in urban areas. In order to qualify, an airport must report a minimum annual enplanement of 2,500 passengers as reported by the FAA for at least one calendar year from 2001 to the most current data available for the delineation. All identified airports must be currently in service and providing services for the urban area in which it is to be included. The 2,500 passenger threshold was chosen to provide for a more complete coverage of airports, particularly those near smaller initial urban cores. The annual passenger boarding data will include only commercial service enplanements (primary and nonprimary) to promote consistency with the Census 2000 urban area criteria as well as to facilitate a more replicable delineation. Also in accordance with the Census 2000 delineation, the inclusion of airports will represent the last step in identifying qualifying urban territory. However, upon further consideration and review of data, the Census Bureau has decided to also include airports within 0.5 miles of the urban area. This process simulates the connection of noncontiguous qualifying territory via the hop criteria. All other urban land cover/land use not qualifying through residential population count and density measures will be represented through the enclave and indentation criteria designed for the Census 2000 delineation and supplemented with the impervious surface data introduced for the 2010 Census.

Comments Pertaining to the Proposed Criterion Requiring at Least 1,500 Persons Residing Outside Institutional Group Quarters for an Area To Qualify as an Urban Area

Five commenters supported the proposed criterion requiring that an area must encompass at least 1,500 persons living outside institutional group quarters (GQs) in order to qualify as an urban area. Two commenters opposed this criterion, with one stating that an urban area should qualify only on the basis of population residing outside group quarters and the other suggesting that qualification as an urban area should be based on total population without distinction based on status within institutional group quarters. One commenter requested that the Census Bureau more closely examine the nature of the land use associated with large group quarters before disqualifying territory as urban as it contradicts the proposed criteria relating to population density and impervious surfaces.

In response to the comments received, the Census Bureau is finalizing the provision that all qualifying urban areas must encompass at least 1,500 persons living outside institutional GQs without change to avoid the delineation of an urban area comprising only a few census blocks in which an institutional GQ was located. The Census Bureau recognizes that although the population densities of these areas exceed the minimum thresholds specified in the urban area criteria, and the total populations exceed 2,500, they lack most of the residential, commercial, and infrastructure characteristics typically associated with urban territory.

Comments Pertaining to the Proposal to Eliminate the Central Place Concept

The Census Bureau received nine comments regarding the proposed elimination of the central place concept from the urban area delineation criteria. Eight commenters agreed with the proposal. The one commenter who disagreed requested that the Census Bureau should continue to identify central places until it is clear that the elimination of these criteria will not impact the designation of principal cities of metropolitan and micropolitan statistical areas.

In response to the comments received, the Census Bureau is finalizing its proposal to discontinue identifying central places as part of the 2010 Census urban area delineation process. The Census Bureau notes that the identification of central places is no longer necessary for the process of delineating urban areas and can result in some central places being split between urban and rural territory. Moreover, the Office of Management and Budget (OMB) always had its own criteria to identify principal cities as part of the metropolitan and micropolitan statistical areas program.[3] The list of principal cities identified by the OMB is quite similar to what would emerge if the urban area process created a list of central places. The Census Bureau no longer sees a need for a second representation of the same concept in its statistical and geographic data products. Principal cities of metropolitan and micropolitan statistical areas are identified based on different set of criteria and as part of the metropolitan and micropolitan area delineation process. This decision will have no impact on the metropolitan and micropolitan area delineation process.

Comment Pertaining to the Shape Index Used When Measuring Compactness of Census Blocks

The Census Bureau received one comment concerning the shape index proposed to identify census blocks considered compact during the delineation of the initial urban area cores. This commenter suggested modifying the compactness criterion to only include those census blocks that score 0.310 or higher according to the proposed shape index formula, as opposed to the proposed shape index value of 0.185 or higher.

The Census Bureau will retain the shape index threshold as proposed. Internal research and investigation has shown this to be a reasonable metric for measuring compactness for all census blocks having the potential to qualify as urban without excluding census blocks

[3] See the "2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas," **Federal Register**, 75 FR 37246, June 28, 2010.

that should be included in an urban area.

Comments Pertaining to the Nonstatistical Uses of Urban Area Delineations

Seventeen commenters expressed concern that the Census Bureau does not acknowledge or consider any nonstatistical uses of urban areas when developing delineation criteria. Thirteen of these commenters suggested that the Census Bureau initiate an inter-agency task force to identify the potential negative impacts, particularly on federal funding, resulting from changes to the urban area delineation criteria, and design mitigation measures and/or solutions to these issues if the proposed changes were implemented. These commenters also suggested delaying the delineation of urban areas until provisions are adopted that would prevent adverse impacts on programs and funding formulas relating to urban areas as currently defined.

Nine commenters stressed the importance of consistency in both urban area delineation criteria and status from one decade to another to aid long-term planning and policy making. Five of these commenters specifically requested that territory defined as urban in Census 2000 continue to be defined as urban for the 2010 Census.

Five commenters expressed concern that there are no provisions in the delineation criteria for local input and requested the opportunity to review and comment on the definition of urban areas before boundaries become final. These commenters also expressed concern about the automated and inflexible nature of the delineation process and suggested that the extent of each urban area should be evaluated individually. The Census Bureau also received two comments expressing concern that the proposed delineation criteria do not take into account local zoning laws and incorporated place boundaries.

Two commenters criticized the timing for developing the urban area delineation criteria. These commenters stated that the methodology is flawed because projections related to potential changes in the delineation criteria are based on Census 2000 data and geography. These commenters suggested that the Census Bureau should delay development of the proposed delineation criteria until after 2010 Census data and geography become available.

The Census Bureau received eight requests for the extension of the public comment period on the proposed urban area delineation criteria to further assess its potential impacts. Additional comments expressed difficulty in predicting results of changes to criteria as published in the August 24, 2010 **Federal Register** (75 FR 52174), and requested clarification of the proposed urban area delineation criteria. Commenters also submitted requests for real-world examples of how changes to the urban area delineation criteria would manifest on the landscape, maps of the proposed urban areas, and access to the delineation software to facilitate better informed public comment.

In response to the comments received regarding the nonstatistical uses of Census urban areas, the Census Bureau recognizes that some federal and state agencies use the Census Bureau's urban-rural classification for allocating program funds, setting program standards, and implementing aspects of their programs. The Census Bureau remains committed to an objective, equitable, and consistent nationwide urban area delineation, and thus identifies these areas solely for the purpose of tabulating and presenting statistical data. This provides data users, analysts, and agencies with a baseline set of areas from which to work, as appropriate. Given the many programmatic and often conflicting or competing uses for Census Bureau-defined urban areas, the Census Bureau cannot attempt to take each program into account. Therefore, by not taking any one nonstatistical use into account, the Census Bureau does not favor one program over another. The Census Bureau's designations are used to identify areas to receive funding for urban programs and also to identify areas for exclusion from rural-based programs.

In building upon the Census 2000 urban area criteria, the Census Bureau is developing urban area criteria for the 2010 Census consisting of a single set of rules that allow for application of automated processes based on the input of standardized nationwide datasets that yield consistent results. Rather than defining areas through a process of accretion over time, the criteria also provide a better reflection of the redistribution of population and how it affects the current state of urbanism. This can be done only by reexamining all territory that qualified as either urban or rural in earlier censuses based on different criteria, geography, and population distribution patterns as measured by those censuses. Nonetheless, the Census Bureau will apply urban agglomeration split and individual urban area merge criteria to ensure, to the greatest extent possible, the continued existence of all urbanized areas defined for the Census 2000; although the actual urban territory these areas comprise may differ.

The delineation and production of urban areas and their associated data were scheduled to begin in March 2011, to ensure sufficient time to delineate and review the urban area definitions and prepare geographic information files in time to tabulate statistical data from both the 2010 Census and the American Community Survey (ACS). Adherence to this schedule prevented any attempts toward a test delineation using all of the proposed 2010 urban area criteria for the entire United States and Puerto Rico, thus prohibiting the availability of real-world examples without showing preference to any particular location. Further, this schedule also dictated that the development of the delineation software coincided with the development of the proposed and final criteria.

IV. Changes to the Proposed Urban Area Criteria for the 2010 Census

This section of the **Federal Register** provides information about the Census Bureau's decisions on changes that were incorporated into the Urban Area Criteria for the 2010 Census in response to the many comments received. These decisions benefited greatly from the public participation, which served as a reminder that, although identified for purposes of collecting, tabulating, and presenting federal statistics, the urban areas defined through these criteria represent areas in which people reside, work, and spend their lives and to which they attach a considerable amount of local pride. In reaching our decisions, the Census Bureau took into account the comments received in response to the proposed criteria published in the **Federal Register** on August 24, 2010, (75 FR 52174), as well as comments received during webinars, conference presentations, and meetings with federal, state, and local officials, other users of data for urban areas, and additional research and investigation conducted by Census Bureau staff.

The changes made to the proposed criteria in Section II of the August 24, 2011, **Federal Register** Notice, "Proposed Urban Area Criteria for the 2010 Census," are as follows:

1. In Section II, "Proposed Urban Area Criteria for the 2010 Census," in the introductory paragraph to this section, the Census Bureau removed the reference to Island Areas in the first sentence because the Census Bureau, in consultation with government officials in the Island Areas (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S.

Virgin Islands), is still considering whether to identify urban and rural areas for the Island Areas. Census 2000 was the only census in which density-based criteria were applied to defining urban areas in the Island Areas.

2. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau corrected the initial urban area core delineation criteria to better represent the iterative nature of these criteria. After the initial urban area core with a population density of 1,000 ppsm or more is identified, additional qualifying census tracts may be included only if contiguous to other qualifying census tracts.

3. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau removed reference to census blocks within military installations. Due to imposed restrictions on the selection of features that could be used as census block boundaries within military installations for Census 2000, blocks on military installations that had a population of 2,500 or more were treated as having a population density of 1,000 ppsm even if the density was less than 1,000 ppsm. Census blocks that had a population greater than 1,000 and less than 2,500 were treated as having a population density of 500 ppsm. The Census Bureau has removed these criteria as the restrictions on the selection of features for census block boundaries within military installations is no longer in effect for the 2010 Census.

4. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau clarified references to the MRLC NLCD data used in determining impervious surfaces during the delineation of initial urban cores. The Census Bureau has decided to use the MRLC NLCD 2006 update (recently made available for the conterminous United States in February 2011) to better represent land use/land cover conditions at the time of the delineation. The MRLC 2001 NLCD will be used only where the 2006 data are not available.

5. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau added criteria to include in the initial urban core census blocks that are associated with a high degree of impervious surface land cover and are mostly contiguous to qualifying territory, but fail the shape index threshold of compactness. These criteria were added to compensate for the presence of elongated census blocks defined along road medians, which create narrow strips of territory not qualifying as urban. Through further investigation, the Census Bureau found instances where one or more of these intervening census blocks associated with road medians created a barrier which prevented nearby qualifying territory from being considered contiguous. Furthermore, the Census Bureau has decided census blocks associated with road medians sharing a large degree of contiguity with qualifying territory should be included in the urban area.

6. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau added reference to describe the review of the initial urban area cores. In an effort to mitigate the overextension of territory classified as urban into rural areas, the Census Bureau will identify census blocks qualifying as urban via the impervious surface criteria that are added to the initial urban cores late in the delineation process. The Census Bureau will review these census blocks located on the edge of an initial urban area core to determine if their classification as urban is appropriate. This review will also determine if these late-qualifying census blocks are elongated or small and consistently qualified when compared to the relatively large cell size of the impervious surface data.

7. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.2, the Census Bureau removed the identification of wetlands as exempted territory criteria and references to the MRLC's 2001 NLCD wetlands class definitions. The Census Bureau decided to only consider bodies of water as exempted territory until a more comprehensive category of land use/land cover classes can be identified for the entirety of the United States and Puerto Rico. Furthermore, because the Census Bureau will retain the 2.5 mile maximum jump distance threshold implemented for the Census 2000, it has decided to limit the recognition of exempted territories to prevent the over expansion of urban areas.

8. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.2, the Census Bureau added criteria to include the identification of land area where the populations of the census blocks on both sides of a road segment are zero and, additionally, the road connection crosses at least 1,000 feet of water. The Census Bureau added this criterion to remain consistent with the urban area delineation criteria implemented for Census 2000.

9. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.3, the Census Bureau added a criterion for the inclusion of noncontiguous territory via hops and jumps to allow stand-alone census blocks, that are not contiguous to territory that qualify as part of the initial urban core, but having a population density greater than or equal to 500 ppsm, to be added to an urban area. This criterion is designed to include densely settled territory proximate to the urban fringe within a relatively larger census block that remains separated from the initial urban area core due to the local road network configuration. The addition of this criterion is also consistent with the Census 2000 urban area delineation criteria.

10. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.4, the Census Bureau added reference to the data extracted from the FAA Air Carrier Activity Information System to clarify the dataset that is to be used in the identification of airports that are included in urban areas. The Census Bureau has decided to use data representing annual enplanements for only primary and nonprimary commercial service facilities as defined by the FAA. Limiting the enplanement data to commercial service airports offers the advantage of minimizing the amount of data manipulation required to identify airports, which in turn facilitates public replication of the criteria. This also results in consistency with the Census 2000 urban area delineation criteria.

11. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.4, the Census Bureau modified the criteria for including airports in urban areas by clarifying that the qualifying airport does not need to be contiguous with an urban area, but rather within 0.5 miles of the urban area. The Census Bureau changed this criterion to simulate the connection of noncontiguous qualifying territory via the hop criterion.

12. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.4, the Census Bureau modified the airport inclusion criteria so that the Census Bureau will only identify functioning airports at the time of the delineation. This modification ensures that these criteria will not include an airport if it no longer services a particular urban area.

13. In Section II, "Proposed Urban Area Criteria for the 2010 Census," the Census Bureau moved subsection B.4 in its entirety to follow the criteria for the inclusion of indentations to urban areas

(subsection B.6). The Census Bureau reordered the delineation criteria so that the inclusion of airports will represent the last step in identifying urban territory, as was done for the Census 2000 delineation. Although the airport inclusion criteria do allow for the qualification of noncontiguous facilities to urban areas, they prohibit an airport from serving as a source area from which hops and jumps can originate.

14. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.5, the Census Bureau clarified the criteria for the inclusion of enclaves in urban areas. The criteria distinguish between the two types of enclaves completely surrounded by qualifying land territory, and a third enclave type completely surrounded by qualifying land and nonqualifying water.

15. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.6, the Census Bureau modified the maximum area of the territory within the indentation that is added to the urban area from less than five square miles to less than 3.5 square miles. The Census Bureau changed this criterion for the 2010 Census urban area delineation to reduce the amount of territory qualifying through indentations without lowering the maximum length of the potential closure lines.

16. In Section II, "Proposed Urban Area Criteria for the 2010 Census," the Census Bureau moved subsection B.6 in its entirety to follow immediately the criteria relating to splitting large agglomerations and merging of individual urban areas. For Census 2000, the splitting of large urban agglomerations occurred prior to the inclusion of indentations to urban areas. Splitting the urban agglomerations before the addition of urban territory through the indentation criteria enabled the Census Bureau to better identify where the corridor of contiguity between urban areas was truly at its narrowest, which aided in determining the best split location. The Census Bureau reordered the delineation criteria to remain consistent with the criteria implemented for the Census 2000.

17. In Section II, "Proposed Urban Area Criteria for the 2010 Census," the Census Bureau replaced subsection B.7 with a new set of criteria for splitting large agglomerations based on comments received. The Census Bureau adopted criteria that will ensure that Census 2000 urbanized areas will continue to be recognized as separate urbanized areas if these areas continue to qualify as urbanized under the 2010 Census urban area delineation criteria. Adoption of these criteria will facilitate continuity and comparability between the two decades' urban definitions.

18. In Section II, "Proposed Urban Area Criteria for the 2010 Census," the Census Bureau modified subsection B.8, which addressed the criteria for assigning urban area titles, to allow for more equal representation of local places if the urban area does not contain a place with an urban population of at least 2,500 people. This change is also intended to promote consistency with the Census 2000 criteria for titling urban areas.

19. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B. the Census Bureau added new criteria to identify and qualify additional nonresidential urban-related territory that is not contiguous with, but near qualifying urban areas. The Census Bureau added these criteria in its effort to capture large commercial and/or industrial land uses separated from an urban area by a relatively small amount of undeveloped territory. As a final review, the Census Bureau will examine the territory surrounding the urban areas associated with a high degree of impervious surface land cover and determine whether they should be included in an urban area.

20. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection C, the Census Bureau modified the definitions for *contiguous, exempted territory, group quarters,* and *impervious surface* to clarify how these key terms relate to the 2010 urban area delineation criteria. Additional definitions are provided for *enclave, hop, indentation, initial urban area core, institutional group quarters, jump, and noninstitutional group quarters,* all terms used in the proposed criteria.

21. Throughout this **Federal Register** Notice and the urban area criteria for the 2010 Census, the Census Bureau uses the term "contiguous" wherever the term "adjacent" was used in the proposed 2010 urban area criteria. This change was made for the purposes of clarity.

The Following Sets Forth the Urban Area Criteria for the 2010 Census.

V. Urban Area Criteria for the 2010 Census

The criteria outlined herein apply to the United States[4] and Puerto Rico. The Census Bureau will use the following criteria and characteristics for use in identifying the areas that will qualify for designation as urbanized areas and urban clusters for use in tabulating and presenting data from the 2010 Census, the American Community Survey (ACS), the Puerto Rico Community Survey, and potentially other Census Bureau censuses and surveys.

A. 2010 Census Urban Area, Urbanized Area, and Urban Cluster Definitions

For the 2010 Census, an urban area will comprise a densely settled core of census tracts and/or census blocks that meet minimum population density requirements, along with contiguous territory containing nonresidential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core. To qualify as an urban area on its own, the territory identified according to the criteria must encompass at least 2,500 people, at least 1,500 of which reside outside institutional group quarters. Urban areas that contain 50,000 or more people are designated as urbanized areas (UAs); urban areas that contain at least 2,500 and less than 50,000 people are designated as urban clusters (UCs). The term "urban area" refers to both UAs and UCs. The term "rural" encompasses all population, housing, and territory not included within an urban area.

As a result of the urban area delineation process, an incorporated place or CDP may be partly within and partly outside an urban area. Any place (incorporated place or CDP) that is split by an urban area boundary is referred to as an extended place. Any census geographic areas, with the exception of census blocks, may be partly within and partly outside an urban area.

All criteria based on land area, population, and population density, reflect the information contained in the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) Database (MTDB) produced for the 2010 Census. All calculations of population density include only land; water area contained within census tracts and census blocks are not used to calculate population density.

B. UA and UC Delineation Criteria

The Census Bureau defines urban areas primarily on the basis of residential population density measured at the census tract and census block levels of geography. Two population density thresholds are used in the delineation of urban areas: 1,000 persons per square mile (ppsm) and 500 ppsm. The higher threshold is consistent with population density criteria used in the 1960 Census through 1990 Census urban area delineation processes; it is used to identify the

[4] The United States includes the 50 States and the District of Columbia.

starting point for delineation of individual, potential urban areas and ensures that each urban area contains a densely settled core area that is consistent with previous decades' delineations. The lower threshold was adopted for the Census 2000 process when the Census Bureau adopted an automated delineation methodology; it provides that additional territory that may contain a mix of residential and nonresidential urban uses can qualify for inclusion in an urban area.

1. Identification of Initial Urban Area Cores

The Census Bureau will begin the delineation process by identifying and aggregating contiguous census tracts, each having a land area of less than three square miles and a population density of at least 1,000 ppsm. After the initial urban area core with a population density of 1,000 ppsm or more is identified, additional census tracts with a land area less than three square miles and with a population density of at least 500 ppsm will be included if contiguous to any qualifying census tracts. If a qualifying census tract does not exist, then one or more contiguous census blocks that have a population density of at least 1,000 ppsm are identified and aggregated.

A census block is included in the initial urban area core if it is contiguous to other qualifying territory, and

a. Has a population density of at least 500 ppsm, or

b. At least one-third of the census block consists of territory with a level of imperviousness of at least twenty percent,[5] and is compact in nature as defined by a shape index. A census block is considered compact when the shape index is at least 0.185 using the following formula: $I = 4\pi A/P^2$ where I is the shape index, A is the area of the block, and P is the perimeter of the block, or

c. At least one-third of the census block consists of territory with a level of imperviousness of at least twenty percent, and at least forty percent of its boundary is contiguous with qualifying territory.[6]

The Census Bureau will apply criteria 1.a, 1.b, and 1.c above until there are no census blocks to add to an urban area.[7] Any "holes" or remaining nonqualifying territory completely contained within an initial urban area core that is less than five square miles in area will qualify as urban via the criteria for the inclusion of enclaves set forth in V.B.4.a.

2. Inclusion of Noncontiguous Territory Separated by Exempted Territory

The Census Bureau will identify and exempt territory in which residential development is substantially constrained or not possible due to either topographic or land use conditions.[8] Such territory offsets urban development due to particular land use, land cover, hydrological, and/or topographic conditions. For the 2010 Census, the Census Bureau identifies bodies of water as exempted territory. Additional exempted territory will include land area where the populations of the census blocks on both sides of a road segment are zero and the road connection crosses at least 1,000 feet of water.

Noncontiguous qualifying territory will be added to a core when separated by exempted territory, provided that:

a. The road connection across the exempted territory (located on both sides of the road) is no greater than five miles, and

b. The road connection does not cross more than a total of 2.5 miles of territory not classified as exempted (those segments of the road connection where exempted territory is not on both sides of the road), and

c. The total length of the road connection (exempt distance and nonexempt distance) is no greater than five miles for a jump and no greater than 2.5 miles for a hop.

3. Inclusion of Noncontiguous Territory via Hops and Jumps

Noncontiguous territory that meets the proposed population density criteria specified in Sections 1.a, 1.b, and 1.c above, but is separated from an initial urban area core of 1,000 or more people, will be added via a "hop" along a road connection of no more than 0.5 miles. Multiple hops may be made along a single road connection, thus accounting for the nature of contemporary urban development which often encompasses alternating patterns of residential and nonresidential land uses.

After adding territory to an initial urban area core via hop connections, the Census Bureau will identify all cores that have a population of 1,500 or more and add other qualifying territory via a jump connection.[9] Jumps are used to connect densely settled noncontiguous territory separated from the core by territory with low population density measuring greater than 0.5 and no more than 2.5 road miles. This process recognizes the existence of larger areas of nonresidential urban uses or other territory with low population density that do not provide a substantial barrier to interaction between outlying territory with high population density and the main body of the urban area. Because it is possible that any given densely settled area could qualify for inclusion in multiple cores via a jump connection, the identification of jumps in an automated process starts with the initial urban area core that has the largest total population and continues in descending order based on the total population of each initial urban area core. Only one jump is permitted along any given road connection, unless the territory being included as a result of the jump was an initial urban area core with a population of 50,000 or more. This limitation, which has been in place since the inception of the urban area delineation process for the 1950 Census, prevents the artificial extension of urban areas over large distances that results in the inclusion of communities that are not commonly perceived as connected to the particular initial urban area core. Exempted territory is not taken into account when measuring road distances along hop and jump corridors.

In addition to the distance criteria listed above, a hop or a jump will qualify only if:

a. The territory identified in the high-density destination and along the hop or

[5] The data used to define impervious surfaces are limited to only those that are included in the MRLC's 2001 NLCD or NLCD 2006 update where available. The Census Bureau has found in testing the NLCD that territory with an impervious percent less than twenty percent results in the inclusion of road and structure edges, and not the actual roads or buildings themselves.

[6] The Census Bureau found in testing with the new 2010 Census geography that a number of census blocks were associated with a high degree of impervious surface land cover and contiguous to territory qualifying as urban, but fail the shape index threshold of compactness . These elongated census blocks are largely the result of block boundaries defined along road medians and can artificially separate qualifying territory that should be considered contiguous. Where appropriate, these elongated census blocks will be added to the urban area to maintain contiguity of qualifying territory.

[7] The Census Bureau will identify census blocks qualifying as urban via the impervious surface criteria that are added to an initial urban area core during later iterations of the delineation criteria. These census blocks located on the edge of initial urban cores will be reviewed to determine if their classification as urban is appropriate. The Census Bureau will also determine if these census blocks were added as a result of the relatively large cell size of the impervious surface data when overlaid with a small or thin census block.

[8] The land cover and land use types used to define exempted territory are limited to only those that are included in or can be derived from the Census Bureau's MTDB nationally, consistently, and with a reasonable level of accuracy.

[9] All initial urban area cores with a population less than 1,500 are not selected to continue the delineation as separate urban areas; however, these cores still are eligible for inclusion in an urban area using subsequent proposed criteria and procedures.

jump corridor has a combined overall population density of at least 500 ppsm, or

b. The high-density destination to be added via the hop or jump has a total population of 1,000 or more.

Although census blocks with a population density greater than or equal to 500 ppsm, but less than 1,000 ppsm, and not contiguous to qualifying territory containing at least one census tract or census block with a population density of at least 1,000 ppsm do not qualify as part of the initial urban core, these census blocks may still qualify as urban via hops or jumps.[10]

4. Inclusion of Enclaves

The Census Bureau will add enclaves (that is, nonqualifying area completely surrounded by area already qualified for inclusion as urban) within the urban area, provided that they are surrounded only by land area that qualified for inclusion in the urban area based on population density criteria and at least one of the following conditions is met:

a. The area of the enclave must be less than five square miles, or

b. All area of the enclave is surrounded by territory that qualified for inclusion in the initial core, and is more than a straight-line distance of 2.5 miles from a land block that is not part of the urban area.

Additional enclaves will be identified and included within the urban area if:

c. The area of the enclave is less than five square miles, and

d. The enclave is surrounded by both land that qualified for inclusion in the urban area and water, and

e. The length of the line of adjacency with the water is less than the length of the line of adjacency with the land.

5. Splitting Large Agglomerations and Merging Individual Urban Areas

Population growth and redistribution coupled with the automated urban area delineation methodology that will be used for the 2010 Census may result in large urban agglomerations of continuously developed territory that may encompass urban areas that were defined as separate urbanized areas in Census 2000. Conversely, the delineation methodology may also result in separate urbanized areas that were previously defined as belonging to a single urbanized area. If such results occur, the Census Bureau will apply split and merge criteria guided by the Census 2000 urban area boundaries to the greatest extent possible to ensure the continued recognition of all such urbanized areas. All territory subject to either the splitting or merging criteria must first qualify as urban according to the 2010 Census delineation criteria.

The rule to retain the inventory of urbanized areas that continue to separately qualify for the 2010 Census does not apply to urban clusters. Urban clusters may be merged with other urban areas. The Census Bureau retains previously separate urbanized areas because these urban areas have historically developed as the functional units of 50 years of urbanized area delineation. Mandating this rule for urban clusters would artificially impede these areas from merging to form urbanized areas.

The Census Bureau will split a large urban agglomeration if the agglomeration consists of urbanized areas that were defined separately for the Census 2000. Potential split locations will include territory not qualifying as urban for the 2010 Census, water features, jump or hop corridors,[11] impervious census blocks,[12] where the corridor of contiguity between the component urbanized areas is at its most narrow, other geographic boundaries,[13] and/or the nearest location to the midpoint between the two component urbanized areas. In all cases, the Census Bureau will split the urban agglomeration at the best possible location that ensures the continued existence of all urbanized areas defined for the Census 2000.

After splitting all qualifying urbanized agglomerations into their component urbanized areas, the Census Bureau will examine all urban area cores sharing territory contained within the boundaries of the same urban area previously defined for the Census 2000. The Census Bureau will merge qualifying urban territory if an urban area defined for the Census 2000 is at risk of changing urban status from an urbanized area to an urban cluster, or losing its urban status entirely. If it is possible to maintain the urban status of a Census 2000 urban area, the Census Bureau will merge noncontiguous urban territories in descending order of population[14] until the urban area status threshold is met.[15]

After application in their entirety, the splitting and merging criteria will not prevent the formation of new urban areas consisting of territory previously defined as belonging to a Census 2000 urban area. These criteria also will not completely prevent urban areas from changing urban status.

6. Inclusion of Indentations

The Census Bureau will evaluate and include territory that forms an indentation within an urban area. This recognizes that small, sparsely settled areas that are partially enveloped by urban territory are more likely to be affected by and integrated with contiguous urban territory.

To determine whether an indentation should be included in the urban area, the Census Bureau will identify a closure line, defined as a straight line no more than one mile in length, that extends from one point along the edge of the urban area across the mouth of the indentation to another point along the edge of the urban area.

A census block located wholly or partially within an indentation will be included in the urban area, if at least 75 percent of the area of the block is inside the closure line. The total area of those blocks that meet or exceed the 75 percent criterion is compared to the area of a circle, the diameter of which is the length of the closure qualification line. The territory within the indentation will be included in the urban area if its area is at least four times the area of the circle and less than 3.5 square miles.

If the collective area of the census blocks inside the closure line does not meet the criteria listed above, the Census Bureau will define successive closure lines within the indentation, starting at its mouth and working inward toward the base of the indentation, until the criteria for inclusion are met or it is determined that the indentation will not qualify for inclusion.

7. Inclusion of Airports

After all territory has been added to the urban area via hop and jump connections, enclaves, and indentations,

[10] These isolated census blocks not contiguous to an initial core remain eligible destinations for either hops or jumps. These census blocks may be included via the noncontiguous qualifying territory criteria in an effort to capture proximate densely settled territory on the urban fringe within a relatively larger census block that is separated from the initial urban area core.

[11] The Census Bureau will remove the jump or hop connection if the component urban areas are connected via the noncontiguous qualifying territory criteria.

[12] The Census Bureau may remove the entire connection in cases where urban areas are only contiguous via elongated census blocks qualifying as urban and associated with road medians. The connection will remain intact in situations where additional impervious census blocks are present.

[13] In situations where an incorporated place, CDP, or minor civil division crosses the Census 2000 urbanized area boundary, the 2010 urbanized area boundary may be modified to follow these boundaries if it is deemed that territory qualifying as urban belongs more to a particular urbanized area.

[14] All urban territory separated solely by water may also be merged regardless of its population.

[15] Nonqualifying intervening territory separating the merged urban territories will be included to avoid the formation of noncontiguous urban areas.

the Census Bureau will then add whole census blocks that approximate the territory of major airports, provided at least one of the blocks that represent the airport is within a distance of 0.5 miles of the edge of qualifying urban territory. An airport qualifies for inclusion, if it is currently functional and had an annual enplanement of at least 2,500 passengers in any year between 2001 and the last year of reference in the FAA Air Carrier Activity Information System.[16] In cases where the qualifying airport is not contiguous to the qualifying urban area, the intervening nonqualifying census blocks will also be included in the urban area.

8. Additional Nonresidential Urban Territory

The Census Bureau will identify additional nonresidential urban-related territory that is noncontiguous, yet near the urban area. The Census Bureau recognizes the existence of large commercial and/or industrial land uses that are separated from an urban area by a relatively thin "green buffer," small amount of undeveloped territory, and/or narrow census block required for tabulation (such as a water feature, offset boundary, road median, or area between a road and rail feature). The Census Bureau will review all groups of census blocks whose members qualify as urban via the impervious surface criteria set forth in Section 1.b, have a total area of at least 0.15 square miles,[17] and are within 0.25 miles of an urban area. A final review of these census blocks and surrounding territory[18] will determine whether to include this territory in an urban area.

9. Assigning Urban Area Titles

A clear, unambiguous title based on commonly recognized place names helps provide context for data users, and ensures that the general location and setting of the urban area can be clearly identified and understood. The title of an urban area identifies the place(s) that is (are) most populated within the urban area. All population requirements for places and minor civil divisions (MCDs) apply to the portion of the entity's population that is within the specific urban area being named. The following criteria will be used by the Census Bureau to determine the title of an urban area:

a. The most populous incorporated place with a population of 10,000 or more within the urban area will be listed first in the urban area title.

b. If there is no incorporated place with a population of 10,000 or more, the urban area title will include the name of the most populous incorporated place or CDP having at least 2,500 people in the urban area.

Up to two additional places, in descending order of population size, may be included in the title of an urban area provided that:

c. The place has 250,000 or more people in the urban area, or

d. The place has at least 2,500 people in the urban area, and that population is at least two-thirds of the urban area population of the most populous place in the urban area.

If the urban area does not contain a place with an urban population of at least 2,500 people, the Census Bureau will consider the name of the incorporated place, CDP, or MCD with the largest total population in the urban area, or a local name recognized for the area by the United States Geological Survey's (USGS) Geographic Names Information System (GNIS), with preference given to names also recognized by the United States Postal Service (USPS). The urban area title will include the USPS abbreviation of the name of each state or statistically equivalent entity into which the urban area extends. The order of the state abbreviations is the same as the order of the related place names in the urban area title.[19] If an MCD name is used (outside of New England), the title also will include the name of the county in which the MCD is located.

If a single place or MCD qualifies as the title of more than one urban area, the largest urban area will use the name of the place or MCD. The smaller urban area will have a title consisting of the place or MCD name and the direction (North, South, East, and/or West) of the smaller urban area as it relates geographically to the larger urban area with the same place or MCD name.

If any title of an urban area duplicates the title of another urban area within the same state, or uses the name of an incorporated place or CDP, that is duplicated within a state, the name of the county that has most of the population of the largest place or MCD is appended, in parentheses, after the duplicate place name for each urban area. If there is no incorporated place or CDP name in the urban area title, the name of the county having the largest total population residing in the urban area will be appended to the title.

C. Definitions of Key Terms

Census Block: A geographic area bounded by visible and/or invisible features shown on a map prepared by the Census Bureau. A block is the smallest geographic entity for which the Census Bureau tabulates decennial census count data.

Census Designated Place (CDP): A statistical geographic entity encompassing a concentration of population, housing, and commercial structures that is clearly identifiable by a single name, but is not within an incorporated place. The CDPs are the statistical counterparts of incorporated places and represent distinct, unincorporated communities.

Census Tract: A small, relatively permanent statistical geographic division of a county defined for the tabulation and publication of Census Bureau data. The primary goal of the census tract program is to provide a set of nationally consistent, small, statistical geographic units, with stable boundaries that facilitate analysis of data between decennial censuses.

Contiguous: A geographic term referring to two or more areas that are adjacent to one another, sharing either a common boundary or at least one common point.

Core Based Statistical Area (CBSA): A statistical geographic entity defined by the U.S. Office of Management and Budget (OMB), consisting of the county or counties associated with at least one core (urban area) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and micropolitan statistical areas are the two types of CBSAs.

Enclave: A territory not qualifying as urban that is either completely surrounded by qualifying urban territory or surrounded by qualifying urban territory and water.

Exempted Territory: A territory that is exempt from the urban area criteria because its extent is entirely of water or an unpopulated road corridor that crosses water.

[16] The annual passenger boarding data only includes primary and nonprimary commercial service enplanements as defined and reported by the FAA Air Carrier Activity Information System.

[17] The Census Bureau found in testing that individual (or groups of) census blocks with a high degree of impervious surface land cover with an area less than 0.15 square miles tend to be more associated with road infrastructure features such as cloverleaf overpasses and multilane highway medians.

[18] Additional census blocks within eighty feet of the initial groups also qualifying as impervious, but failing the shape index, are also identified for review.

[19] In situations where an urban area is only associated with one place name but is located in more than one state, the order of the state abbreviations will begin with the state within which the place is located and continue in descending order of population of each state's share of the population of the urban area.

Group Quarters (GQ): A place where people live or stay, in a group living arrangement that is owned or managed by an entity or organization providing housing and/or services for the residents. These services may include custodial or medical care, as well as other types of assistance, and residency is commonly restricted to those receiving these services.

Hop: A connection from one urban area core to other qualifying urban territory along a road connection of 0.5 miles or less in length.

Impervious Surface: Man-made surfaces, such as building roofs, roads, and parking lots.

Incorporated Place: A type of governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), village, or other legally recognized description that provides a wide range governmental services for a concentration of people within legally prescribed boundaries.

Indentation: A recess in the boundary of an urban area produced by settlement patterns and/or water features resulting in a highly irregular urban area shape.

Initial Urban Area Core: Contiguous territory qualifying as urban according to population count, density, and degree of impervious surface land cover.

Institutional Group Quarters: People under formally authorized, supervised care or custody in institutions at the time of enumeration, who are generally, restricted to the institution, under the care or supervision of trained staff, and classified as "patients" or "inmates."

Jump: A connection from one urban area core to other qualifying urban territory along a road connection that is greater than 0.5 miles, but less than or equal to 2.5 miles in length.

MAF/TIGER (MTDB): Database developed by the Census Bureau to support its geocoding, mapping, and other product needs for the decennial census and other Census Bureau programs. The Master Address File (MAF) is an accurate and current inventory of all known living quarters including address and geographic location information. The Topologically Integrated Geographic Encoding and Referencing (TIGER) database defines the location and relationship of boundaries, streets, rivers, railroads, and other features to each other and to the numerous geographic areas for which the Census Bureau tabulates data from its censuses and surveys.

Metropolitan Statistical Area: A core based statistical area (CBSA) associated with at least one urbanized area that has a population of at least 50,000. A metropolitan statistical area comprises a central county or counties containing the urbanized area, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured by commuting.

Micropolitan Statistical Area: A core based statistical area (CBSA) associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000. A micropolitan statistical area comprises a central county or counties containing the urban cluster, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured by commuting.

Minor Civil Division (MCD): The primary governmental or administrative division of a county in 29 states and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the incorporated places also constitute MCDs.

New England City and Town Area (NECTA): A statistical geographic entity that is delineated by the U.S. Office of Management and Budget (OMB) using cities and towns in the New England states as building blocks rather than counties, and that is conceptually similar to the metropolitan and micropolitan statistical areas.

Noncontiguous: A geographic term referring to two or more areas that do not share a common boundary or a common point along their boundaries, such that the areas are separated by intervening territory.

Noninstitutional Group Quarters: Dwelling of people who live in group quarters other than institutions.

Rural: Territory not defined as urban.

Urban: Generally, densely developed territory, encompassing residential, commercial, and other nonresidential urban land uses within which social and economic interactions occur.

Urban Area: The generic term used to refer collectively to urbanized areas and urban clusters.

Urban Cluster (UC): A statistical geographic entity consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have at least 2,500 persons but fewer than 50,000 persons.

Urbanized Area (UA): A statistical geographic entity consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have a minimum population of at least 50,000 persons.

Executive Order 12866

This notice has been determined to be not significant under Executive Order 12866.

Paperwork Reduction Act

This notice does not contain a collection of information subject to the requirements of the Paperwork Reduction Act, 44 United States Code, chapter 35.

Dated:August 16, 2011.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2011–21647 Filed 8–23–11; 8:45 am]

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H.R. 2553/P.L. 112–27
Airport and Airway Extension Act of 2011, Part IV (Aug. 5, 2011; 125 Stat. 270)

H.R. 2715/P.L. 112–28
To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

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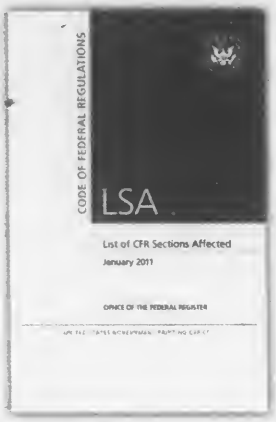

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