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OFFICE OF THE FEDERAL REGISTER

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WHEN: Tuesday, April 9, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008

Contents

Federal Register
Vol. 78, No. 64
Wednesday, April 3, 2013

Separate Parts In This Issue

Part II
Commerce Department, Patent and Trademark Office, 20180–20211

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Executive Orders:
13639.....19979

12 CFR
272.....19981

14 CFR
25.....19981
33.....19982
39.....19983
71.....19985

21 CFR
510.....19986
522.....19986
558.....19986

23 CFR
Proposed Rules:
771.....20074

29 CFR
Proposed Rules:
4000.....20039
4001.....20039
4043.....20039
4204.....20039
4206.....20039
4231.....20039

33 CFR
165.....19988
Proposed Rules:
100.....20066

34 CFR
Proposed Rules:
Ch. III.....20069

37 CFR
1.....20180
2.....20180
7.....20180
10.....20180
11.....20180
41.....20180

40 CFR
52 (5 documents).....19990, 19991, 19994, 19998, 20001
81.....20001
82.....20004
180 (2 documents).....20029, 20032
239.....20035
258.....20035
Proposed Rules:
239.....20073
258.....20073

49 CFR
Proposed Rules:
622.....20074

50 CFR
648.....20037
679.....20037
Proposed Rules:
17.....20074

Federal Register
Vol. 78, No. 64
Wednesday, April 3, 2013

Presidential Documents

Title 3—

The President

Executive Order 13639 of March 28, 2013

Establishment of the Presidential Commission on Election Administration

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the efficient administration of Federal elections and to improve the experience of all voters, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the Presidential Commission on Election Administration (Commission).

Sec. 2. *Membership.* (a) The Commission shall be composed of not more than nine members appointed by the President. The members shall be drawn from among distinguished individuals with knowledge about or experience in the administration of State or local elections, as well as representatives of successful customer service-oriented businesses, and any other individuals with knowledge or experience determined by the President to be of value to the Commission.

(b) The President shall designate two members of the Commission to serve as Co-Chairs.

Sec. 3. *Mission.* (a) The Commission shall identify best practices and otherwise make recommendations to promote the efficient administration of elections in order to ensure that all eligible voters have the opportunity to cast their ballots without undue delay, and to improve the experience of voters facing other obstacles in casting their ballots, such as members of the military, overseas voters, voters with disabilities, and voters with limited English proficiency.

In doing so, the Commission shall consider as appropriate:

(i) the number, location, management, operation, and design of polling places;

(ii) the training, recruitment, and number of poll workers;

(iii) voting accessibility for uniformed and overseas voters;

(iv) the efficient management of voter rolls and poll books;

(v) voting machine capacity and technology;

(vi) ballot simplicity and voter education;

(vii) voting accessibility for individuals with disabilities, limited English proficiency, and other special needs;

(viii) management of issuing and processing provisional ballots in the polling place on Election Day;

(ix) the issues presented by the administration of absentee ballot programs;

(x) the adequacy of contingency plans for natural disasters and other emergencies that may disrupt elections; and

(xi) other issues related to the efficient administration of elections that the Co-Chairs agree are necessary and appropriate to the Commission's work.

(b) The Commission shall be advisory in nature and shall submit a final report to the President within 6 months of the date of the Commission's first public meeting.

Sec. 4. *Administration.* (a) The Commission shall hold public meetings and engage with Federal, State, and local officials, technical advisors, and nongovernmental organizations, as necessary to carry out its mission.

(b) In carrying out its mission, the Commission shall be informed by, and shall strive to avoid duplicating, the efforts of other governmental entities.

(c) The Commission shall have a staff which shall provide support for the functions of the Commission.

Sec. 5. *Termination.* The Commission shall terminate 30 days after it presents its final report to the President.

Sec. 6. *General Provisions.* (a) To the extent permitted by law, and subject to the availability of appropriations, the General Services Administration shall provide the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission on a reimbursable basis.

(b) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), may apply to the Commission, any functions of the President under that Act, except for those in section 6 of the Act, shall be performed by the Administrator of General Services.

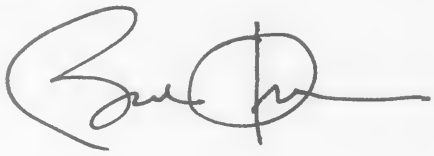
(c) Members of the Commission shall serve without any additional compensation for their work on the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(d) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order is not intended to, and does not, 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, or agents, or any other person.



THE WHITE HOUSE,
March 28, 2013.

[FR Doc. 2013–07837
Filed 4–2–13; 8:45 am]
Billing code 3295–F3

Rules and Regulations

Federal Register
Vol. 78, No. 64
Wednesday, April 3, 2013

FEDERAL RESERVE SYSTEM

12 CFR Part 272

Federal Open Market Committee; Rules of Procedure

AGENCY: Federal Open Market Committee, Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Federal Open Market Committee is amending its Rules of Procedure to require that at least one of the seven members constituting a quorum of the Committee represent a Federal Reserve Bank.

DATES: *Effective Date:* April 3, 2013.

FOR FURTHER INFORMATION CONTACT: Alicia S. Foster, Senior Special Counsel (202–452–5289), Legal Division, Board of Governors of the Federal Reserve System; or Deborah J. Danker, Deputy Director (202–452–3253), Federal Open Market Committee, 20th and C Streets, NW., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION: The Federal Open Market Committee (Committee) is composed of the members of the Board of Governors of the Federal Reserve System (Board) and five representatives of the Federal Reserve Banks elected in the manner provided in the Federal Reserve Act.[1] Because the Board has an authorized membership of seven Governors, the Committee has a maximum authorized membership of twelve members (seven Board members and five Federal Reserve Bank representatives).

[1] *See* 12 U.S.C. 263(a). Pursuant to the Act, the Federal Reserve Banks also elect an alternate for each primary Federal Reserve Bank representative on the Committee. Each alternate is authorized to serve on the Committee in the absence of the relevant primary representative. Each primary and alternate Federal Reserve Bank representative on the Committee must be a President or First Vice President of a Federal Reserve Bank. *Id.*

While the Act does not define a quorum of the Committee, the Committee's rule, 12 CFR 272.3(c), defines a quorum of the Committee for purposes of transacting business as seven of the members of the Committee unless fewer than seven members are in office in which case the number of members then in office constitutes a quorum. The rule does not address the composition of the seven-member quorum. Thus, under the current rule, it is possible that the seven-member quorum may not include a member that represents a Federal Reserve Bank. Under the Committee's amended rule, at least one of the seven members constituting the seven-member quorum of the Committee must represent a Federal Reserve Bank.

The Committee believes that the revised quorum rule ensures that, under the normal operating environment when at least seven members are in office, the Committee's representation includes both Board and Federal Reserve Banks members. This change aligns the rule with the practice of the Committee. The representation requirement does not apply outside the normal operating environment when there are fewer than seven members in office.

The amended rule relates solely to the internal procedure of the Committee. Accordingly, the public notice, public comment, and delayed effective date provisions of the Administrative Procedure Act do not apply to the amended rule. *See* 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply to the amended rule.

List of Subjects in 12 CFR Part 272

Administrative practice and procedure, Organizations and functions (Government agencies).

Authority and Issuance

For the reasons set out in the preamble, the Federal Open Market Committee amends 12 CFR part 272 to read as follows:

PART 272—RULES OF PROCEDURE

■ 1. The authority citation for part 272 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 2. Section 272.3(c) is revised to read as follows:

§ 272.3 Meetings.

* * * * *

(c) *Quorum.* Seven members, at least one of whom represents a Federal Reserve Bank, constitute a quorum of the Committee for purposes of transacting business except that, if there are fewer than seven members in office, then the number of members in office constitute a quorum. For purposes of this paragraph (c), members of the Committee include alternates acting in the absence of members. Less than a quorum may adjourn a meeting of the Committee from time to time until a quorum is in attendance.

* * * * *

By order of the Federal Open Market Committee, March 26, 2013.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2013–07605 Filed 4–2–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–1215, Special Conditions No. 25–482–SC]

Special Conditions: Embraer S.A., Model EMB–550 Airplanes; Flight Envelope Protection: High Speed Limiting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; correction.

SUMMARY: This document corrects an error that appeared in Docket No. FAA–2012–1215, Special Conditions No. 25–12–482–SC, which was published in the **Federal Register** on February 19, 2013 (78 FR 11562). The error was an extra number, "12," in the number of Special Conditions. To avoid confusion, the special conditions published as Docket No. FAA–2012–1215, Special Conditions No. 25–12–482–SC, has been renamed Docket No. FAA–2012–1215, Special Conditions No. 25–482–SC. The heading of this correction also reflects the correct Special Conditions No. 25–482–SC.

DATES: The effective date of this correction is May 3, 2013.

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

SUPPLEMENTARY INFORMATION: The document designated as "Docket No. FAA–2012–1215, Special Conditions No. 25–12–482–SC" was published in the **Federal Register** on February 19, 2013 (78 FR 11562). The document issued special conditions pertaining flight envelope protection: high speed limiting.

As published, the document contained an error in that the Special Conditions number. To avoid confusion, in the heading of this correction to the special conditions has been changed to the correct Special Conditions number, No. 25–482–SC.

Since no other part of the regulatory information has been changed, the special conditions are not being republished.

Correction

In Final special conditions document [FR Doc. 2013–03676 Filed 2–15–13; 8:45 am] published on February 19, 2013 (78 FR 11562), make the following correction:

■ On page 11562, in the third column, in the Headings section, correct "Special Conditions No. 25–12–482–SC" to read "Special Conditions No. 25–482–SC."

Issued in Renton, Washington, on March 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–07651 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[EDocket No. FAA–2012–1085; Special Conditions No. 33–013–SC]

Special Conditions: Turbomeca Ardiden 3K Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition.

SUMMARY: We are issuing these special conditions for the Turbomeca Ardiden 3K model engines. This engine model will have a novel or unusual design feature that is a 30-minute all engines operating (AEO) power rating for hovering at increased power (HIP). This rating is primarily intended for high-power hovering operations that are normal mission functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the FAA considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 3, 2013.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning these special conditions, contact Tara Fitzgerald, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone: (781) 238–7130; facsimile: (781) 238–7199; email: *tara.fitzgerald@faa.gov*. For legal questions concerning these special conditions, contact Vincent Bennett, ANE–7 Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone: (781) 238–7044; facsimile: (781) 238–7055; email: *vincent.bennett@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2010, Turbomeca S.A. (Turbomeca) applied for a type certificate for their new Ardiden 3K turboshaft engine. The Ardiden 3K engine is the first variant in the new Ardiden 3 series. This engine incorporates a two-stage centrifugal compressor that is driven by a single-stage high-pressure turbine. A two-stage power turbine drives the engine output shaft. The control system includes a dual-channel full-authority digital-electronic control.

The engine will incorporate a novel or unusual design feature, which is a 30-minute hovering at increased power (HIP) rating. The applicant requested this rating to support extended hover operations at high power.

Special conditions are necessary to apply additional requirements for rating definition, instructions for continued airworthiness (ICA), instrumentation, and endurance testing because the applicable airworthiness standards do not contain adequate or appropriate airworthiness standards to address this design feature. The ICA requirement addresses the unknown nature of actual rating usage and associated engine deterioration. The applicant is expected to assess the expected usage, and publish ICA and Airworthiness Limitations Section limits in accordance with those assumptions, such that engine deterioration is not excessive. The instrumentation requirement is to ensure that operators use this high-power rating within its limits, and that engine integrity is maintained. The endurance test requirement of 25 hours operation at 30-minutes HIP is similar to other special conditions recently issued. Because the Ardiden 3K model has a continuous one engine inoperative (OEI) rating with limits equal to or higher than the proposed 30-minute HIP rating, the applicant may credit the test time performed at the continuous OEI rating toward the 25-hour requirement. However, test time spent at other rating elements of the test, such as takeoff or other OEI ratings (that are equal to or higher than HIP rating values), cannot be counted toward the 25 hours of required running.

These special conditions contain the additional airworthiness standards necessary to establish a level of safety equivalent to the level intended by the applicable standards of airworthiness in effect on the date of application.

Type Certification Basis

Under the provisions of 14 CFR 21.17 and 21.101(a), Turbomeca must show that the model Ardiden 3K turboshaft engine meets the provisions of the applicable regulations in effect on the date of application, or later amendment if so elected. Accordingly, the certification basis for the Ardiden model turboshaft engine is determined to be part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–31.

If because of a novel or unusual design feature, we find that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the Turbomeca model Ardiden 3K turboshaft engine, special conditions are prescribed under the provisions of § 21.16.

We issue special conditions, as defined by 14 CFR 11.19, under 14 CFR 11.38, which become part of the type certification basis as specified in § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. If the type certificate for that model is amended later to include another related model that incorporates the same or similar novel or unusual design feature, or if any other model already included on the same type certificate is modified to incorporate the

same or similar novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Turbomeca model Ardiden 3K turboshaft engine will incorporate a 30-minute HIP rating, for use up to 30 minutes at any time between take-off and landing. The 30-minute time limit applies to each instance the rating is used. However, there is no limit to the number of times the rating can be used during any one flight and there is no cumulative time limitation. These special conditions for a 30-minute HIP rating apply to address this novel and unusual design feature.

Discussion of Comments

A notice of proposed special conditions, Notice 33–12–02–SC for the Turbomeca model Ardiden 3K turboshaft engine was published on November 8, 2012 (77 FR 66936). We received no comments.

Applicability

These special conditions are applicable to Turbomeca model Ardiden 3K turboshaft engines. If Turbomeca applies later for a change to the type certificate to include another closely related model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well. This is true, if the certification basis is the same or contains later amendments that satisfy the certification basis discussed in the section titled "Type Certification Basis."

Conclusion

We reviewed the available data and have determined that air safety and the public interest require adopting these special conditions as proposed. This action affects certain novel or unusual design features on the Turbomeca Model Ardiden 3K turboshaft engine. It is not a rule of general applicability, and applies only to Turbomeca, that requested FAA approval for these engine features.

List of Subjects in 14 CFR part 33

Air transportation, Aircraft, Aviation safety, Safety.

■ The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

■ Accordingly, the FAA issues the following special conditions as part of the type certification basis for the Turbomeca model Ardiden 3K turboshaft engine.

1. Part 1 Definitions

Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, the following definition applies to these special conditions: "Rated 30-Minute Hover at Increased Power (HIP)," means the approved shaft horsepower developed under static conditions at the specified altitude and temperature, and within the operating limitations established under part 33, and limited in use to periods not exceeding 30 minutes.

2. Part 33 Requirements

(a) Sections 33.1 Applicability and 33.3 General. As applicable, all documentation, testing and analysis required to comply with the part 33 certification basis must account for the 30-minute HIP rating, limits, and usage.

(b) Section 33.4, Instructions for Continued Airworthiness (ICA). In addition to the requirements of § 33.4, the ICA must:

(1) Include instructions to ensure that in-service engine deterioration due to rated 30-minute HIP usage will not be excessive, meaning that all approved ratings, including One Engine Inoperative (OEI), are available (within associated limits and assumed usage) for each flight; and that deterioration will not exceed that assumed for declaring a Time Between Overhaul period.

(2) Validate the adequacy of the maintenance actions required under paragraph (b)(1) above.

(3) Include in the Airworthiness Limitations section, any mandatory inspections and serviceability limits related to the use of the 30-minute HIP rating.

(c) Section 33.29, Instrument Connection. The engine must have a means or a provision for a means, which alerts the pilot when the 30-minute HIP rating time limit has expired.

(d) Section 33.87, Endurance Test. In addition to the applicable requirements of §§ 33.87(a), 33.87(d) and 33.87(e) (for engines that combine 2.5 minute and continuous OEI ratings):

(1) The overall test run must include a minimum of 25 hours of operation at 30-minute HIP rating and limits, divided into periods of not less than 30 minutes but not more than 60 minutes, with alternate periods at maximum continuous power or less.

(2) Each § 33.87(d)(3) continuous OEI rating test period of 60 minutes duration run at power and limits equal to or higher than the 30-minute HIP rating, may be credited toward this requirement. Note that you may not count the test time required for the takeoff or other OEI ratings toward the 25 hours of testing required at the 30-minute HIP rating.

Issued in Burlington, Massachusetts, on March 5, 2013.

Colleen M. D'Alessandro,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–07662 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1288; Directorate Identifier 2012–NE–37–AD; Amendment 39–17403; AD 2013–06–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for General Electric Company (GE) CF34–8C and CF34–8E turbofan engines with certain part numbers (P/N) of operability bleed valves (OBV) installed. This AD was prompted by three failure events of ring lock fuel fittings on the OBV. Two of those events led to an engine fire. This AD requires the affected OBVs be removed from service and replaced with OBVs eligible for installation. We are issuing this AD to prevent failure of OBV ring lock fuel fittings, engine fuel leakage, uncontrolled fire, and damage to the airplane.

DATES: This AD is effective May 8, 2013.

ADDRESSES: For service information identified in this AD, contact General Electric Company, One Neumann Way, MD Y–75, Cincinnati, OH; phone: 513–552–2913; email: *geae.aoc@ge.com;* and Web site: *www.GE.com*. You may view the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD

docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility; U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; email: *john.frost@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on December 13, 2012 (77 FR 74125). That NPRM proposed to require the affected OBVs be removed from service and replaced with OBVs eligible for installation.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Change "Operating Hours" to "Flight Hours"

American Eagle Airlines requested that we change "operating hours" to "flight hours" throughout the document. Airlines track the aircraft flight hours, but not the time that an engine operates while the aircraft is on the ground.

We agree. We changed the AD to use flight hours throughout the AD.

Request To Change the Compliance Time

General Electric Company requested that we simplify the compliance by only requiring the OBVs to be replaced within two years after the effective date of the AD.

We do not agree. The proposed AD compliance is substantiated by risk analysis to provide an acceptable level of safety during the control program. We did not change the AD.

In Support of the Proposed AD

The National Transportation Safety Board stated that it is in support of the proposed AD.

P/N Corrections

Since we issued the proposed AD (77 FR 74125, December 13, 2012), we discovered during a technical review while preparing to issue the final rule AD, that the OBV parts manufacturer approval (PMA) P/Ns listed in the proposed AD were incorrect. We corrected PMA P/Ns 392155–2, 392155–3, and 392155–4, to PMA P/Ns 3291552–2, 3291552–3, and 3291552–4, respectively.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 300 engines installed on airplanes of U.S. registry. We also estimate that it will take about two hours per engine to perform the actions required by this AD, and that the average labor rate is $85 per hour. Required parts will cost about $25,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $7,551,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–06–06 General Electric Company: Amendment 39–17403; Docket No. FAA–2012–1288; Directorate Identifier 2012–NE–37–AD.

(a) Effective Date

This AD is effective May 8, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5A2, CF34–8C5A3, CF34–8C5B1, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 turbofan engines, with an operability bleed valve (OBV) part number (P/N) 4121T67P02, P/N 4121T67P03, P/N 4121T67P04, parts manufacturer approval (PMA) P/N 3291552–2, PMA P/N 3291552–3, or PMA P/N 3291552–4, installed.

(d) Unsafe Condition

This AD was prompted by three failure events of ring lock fuel fittings on the OBV. Two of those events led to an engine fire. We are issuing this AD to prevent failure of OBV ring lock fuel fittings, engine fuel leakage, uncontrolled fire, and damage to the airplane.

(e) Compliance

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

(f) Remove OBVs

(1) For OBVs with fewer than 6,000 flight hours since new on the effective date of this AD, remove the OBV from service before accumulating 12,000 flight hours since new, or within four years after the effective date of this AD, whichever occurs first.

(2) For OBVs with 6,000 or more flight hours since new on the effective date of this AD, remove the OBV from service before accumulating an additional 6,000 flight hours, or within two years after the effective date of this AD, whichever occurs first.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) For more information about this AD, contact John Frost, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; email: *john.frost@faa.gov.*

(2) Refer to GE Service Bulletin (SB) No. CF34–8C–AL S/B 75–0017, Revision 1, dated October 9, 2012, and SB No. CF34–8E–AL S/B 75–0012, Revision 1, dated October 9, 2012, for related information.

(3) For service information identified in this AD, contact General Electric Company, One Neumann Way, MD Y–75, Cincinnati, OH; phone: 513–552–2913; email: *geae.aoc@ge.com;* and Web site: *www.GE.com.* You may view the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on March 21, 2013.

Robert J. Ganley,

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

[FR Doc. 2013–07510 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0231; Airspace Docket No. 13–ASW–7]

RIN 2120–AA66

Modification of VOR Federal Airways V–68, V–76, V–194, and V–548 in the Vicinity of Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–68, V–76, V–194, and V–548 in the vicinity of Houston, TX. The FAA is taking this action to correct the airway descriptions contained in Part 71 to ensure they match the information contained in the FAA's aeronautical database and depicted on the associated aeronautical charts.

DATES: Effective date April 3, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

In 1999, the geographic coordinates reference used to describe the Hobby VOR/Distance Measuring Equipment (VOR/DME) navigation aid location changed and was updated in the FAA aeronautical database. However, the associated rulemaking action to amend the Hobby VOR/DME radial listed in the V–68, V–76, V–194, and V–548 descriptions for describing the airway segment between Hobby VOR/DME and Industry VOR Tactical Air Navigation (VORTAC) (V–68 and V–76), and between Hobby VOR/DME and College Station VORTAC (V–194 and V–548) was not accomplished. As a result, the current V–68, V–76, V–194, and V–548 descriptions do not match the airway information contained in the FAA's aeronautical database or the charted depiction of the airways on the aeronautical charts. The aeronautical database and associated charts depict the correct Hobby VOR/DME radial for V–68, V–76, V–194, and V–548. To overcome the conflicting airway description information published in FAA Order 7400.9W (77 FR 50907, August 23, 2012), the FAA is amending the V–68, V–76, V–194, and V–548 descriptions to reflect the correct Hobby VOR/DME radial and match the information contained in the aeronautical database and associated charts.

Accordingly, since this is an administrative change to update the airway's description information to match the information currently contained in the FAA's aeronautical database and published on the associated aeronautical charts, notice and public procedures under Title 5 U.S.C. 553(b) are unnecessary.

The Rule

The FAA amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the descriptions of VOR Federal airways V–68, V–76, V–194, and V–548 in the vicinity of Houston, TX. Specifically, the FAA amends V–68 and V–76 to reflect the Hobby VOR/DME 289° radial to define the intersection on the airway segment between the Hobby VOR/DME and the Industry VORTAC, and amends V–194 and V–548 to reflect the Hobby VOR/DME 289° radial to define the intersection on the airway segment between the Hobby VOR/DME and the College Station VORTAC. Correcting the airway descriptions to reflect the correct Hobby VOR/DME radial ensures the descriptions match the information contained in the FAA's aeronautical database and depicted on the associated charts.

VOR Federal airways are listed in paragraph 6010 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be revised subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is

certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends existing VOR Federal airways in the NAS.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311a, FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6010 VOR Federal airways.

* * * * *

V–68

From Montrose, CO; Cones, CO; Dove Creek, CO; Cortez, CO; Rattlesnake, NM; INT Rattlesnake 128° and Albuquerque, NM, 345° radials; Albuquerque; INT Albuquerque 120° and Corona, NM, 311° radials; Corona; 41 miles 85 MSL, Chisum, NM; Hobbs, NM; Midland, TX; San Angelo, TX; Junction, TX; Center Point, TX; San Antonio, TX; INT San Antonio 064° and Industry, TX, 267° radials; Industry; INT Industry 101° and Hobby, TX, 289° radials; to Hobby.

* * * * *

V–76

From Lubbock, TX; INT Lubbock 188° and Big Spring, TX, 286° radials; Big Spring; San Angelo, TX; Llano, TX; Centex, TX; Industry, TX; INT Industry 101° and Hobby, TX, 289° radials; to Hobby.

* * * * *

V–194

From Cedar Creek, TX; College Station, TX; INT College Station 151° and Hobby, TX, 289° radials; Hobby; Sabine Pass, TX; Lafayette, LA; Baton Rouge, LA; McComb, MS; INT McComb 055° and Meridian, MS; 221° radials; Meridian. From Liberty, NC; Raleigh-Durham, NC; Tar River, NC; Cofield, NC; to INT Cofield 077° and Norfolk, VA, 209° radials.

* * * * *

V–548

From Hobby, TX; INT Hobby 289° and College Station, TX, 151° radials; College Station; INT College Station 307° and Waco, TX, 173° radials; to Waco.

Issued in Washington, DC, March 26, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–07472 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, and 558

[Docket No. FDA–2013–N–0002]

New Animal Drugs; Enrofloxacin; Tilmicosin; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications and abbreviated new animal drug applications during February 2013. FDA is also informing the public of the availability of summaries the basis of approval and of environmental review documents, where applicable.

DATES: This rule is effective April 3, 2013.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during February 2013, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine (CVM) FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

In addition, the animal drug regulations are being amended at 21 CFR 510.600 to correct the spelling of a street name in the sponsor's address, and at 21 CFR 558.618 to clarify the dosage of tilmicosin phosphate in medicated feeds for beef and non-lactating dairy cattle.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING FEBRUARY 2013

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR section	FOIA Summary	NEPA Review
200–495	Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland.	ENROFLOX 100 (enrofloxacin) Injectable Solution.	Original approval as a generic copy of NADA 141–068.	522.812	yes	CE[1]
200–509	Huvepharma AD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria.	TILMOVET 90 (tilmicosin phosphate) Type A medicated article.	Original approval as a generic copy of NADA 141–064.	558.618	yes	CE[1]
200–531	Huvepharma AD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria.	TYLOVET 100 (tylosin phosphate) and RUMENSIN (monensin) Type A medicated articles.	Original approval as a generic copy of NADA 104–646.	558.355	yes	CE[1]

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an Environmental Assessment or an Environmental Impact Statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feed.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 522, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), in the entry for "Huvepharma AD", remove "Haitov" and in its place add "Haytov"; and in the table in paragraph (c)(2), in the entry for "016592", remove "Haitov" and in its place add "Haytov".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. In § 522.812, revise paragraphs (b) and (e)(3)(ii); and add introductory text to paragraph (e)(2) to read as follows:

§ 522.812 Enrofloxacin.

* * * * *

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter:

(1) No. 000859 for use of products described in paragraph (a) as in paragraph (e) of this section; and

(2) No. 055529 for use of product described in paragraph (a)(2) as in paragraphs (e)(2)(i)(B), (e)(2)(ii)(B), (e)(2)(iii), (e)(3)(i), and (e)(3)(iii) of this section.

* * * * *

(e) * * *

(2) *Cattle.* Use the product described in paragraph (a)(2) of this section as follows:

* * * * *

(3) * * *

(ii) *Indications for use*—(A) For the treatment and control of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae, Pasteurella multocida, Haemophilus parasuis, Streptococcus suis, Bordetella bronchiseptica,* and *Mycoplasma hyopneumoniae.*

(B) For the treatment and control of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae, Pasteurella multocida, Haemophilus parasuis,* and *Streptococcus suis.*

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 6. In § 558.355, remove and reserve paragraph (f)(3)(ix); and in paragraphs (f)(3)(ii)(*b*) and (f)(3)(xii)(*b*), add a new last sentence to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(*b*) * * * Tylosin provided by Nos. 000986 and 016592 in § 510.600(c) of this chapter.

* * * * *

(xii) * * *

(*b*) * * * Tylosin provided by Nos. 000986 and 016592 in § 510.600(c) of this chapter.

* * * * *

§ 558.618 [Amended]

■ 7. Amend § 558.618 as follows:

■ a. In paragraph (b), remove "No. 000986" and in its place add "Nos. 000986 and 016592";

■ b. In the table in paragraph (e)(1)(i), in the "Sponsor" column, add ", 016592" after "000986";

■ c. In the table in paragraph (e)(1)(ii), in the "Sponsor" column, remove "000986";

■ d. In the table in paragraph (e)(2)(i), in the "Limitations" column, in the first sentence, remove "12.5 milligrams/kilogram/head/day" and in its place add "12.5 mg tilmicosin/kg of bodyweight/day"; and

■ e. In the table in paragraphs (e)(2)(ii) and (e)(2)(iii), in the "Limitations" column, in the first sentence, remove "12.5 milligrams tilmicosin/kilogram/head/day" and in its place add "12.5 mg tilmicosin/kg of bodyweight/day".

Dated: March 26, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–07571 Filed 4–2–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0074]

RIN 1625–AA00

Safety Zone; BWRC Spring Classic, Parker, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the Lake Moovalya region of the navigable waters of the Colorado River in Parker, Arizona for the Blue Water Resort and Casino Spring Classic. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 6 a.m. on April 5, 2013, until 6 p.m. on April 7, 2013. It will be enforced from 6 a.m. to 6 p.m. on April 5, 6, and 7, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0074]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Deborah Metzger, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *D11-PF-MarineEventsSanDiego@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delay would be impracticable. Immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest and impracticable, since immediate action is needed to ensure the public's safety.

B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C 1221 et seq.).

The Southern California Speedboat Club is sponsoring the Blue Water Resort and Casino Spring Classic, which is held on the Lake Moovalya region of the Colorado River in Parker, Arizona. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other vessels and users of the waterway. This event involves powerboats racing along a circular course. The size of the boats varies from 10 to 21 feet in length. Approximately 85 boats will be participating in this event. The sponsor will provide two patrol boats and two rescue boats to act as river closure boats that help facilitate the event and ensure public safety.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 6 a.m. to 6 p.m. on April 5, 2013, through April 7, 2013. This safety zone is necessary to provide for the safety of the crews, spectators, participants, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring with this safety zone unless authorized by the Captain of the Port, or his designated representative. This temporary safety zone includes the waters of the Colorado River between Headgate Dam and 0.5 miles north of the Blue Water Marina in Parker, Arizona. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM).

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels may transit through the established safety zone if authorized to do so by the Captain of the Port or his designated representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 6

a.m. to 6 p.m. on April 5, 2013, through April 7, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the designated representative. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM).

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–552 to read as follows:

§ 165.T11–552 Safety zone; BWRC Spring Classic, Parker, AZ.

(a) *Location.* This temporary safety zone includes the waters of the Colorado River between Headgate Dam and 0.5 miles north of the Blue Water Marina in Parker, Arizona.

(b) *Enforcement Periods.* This section will be in effect from 6 a.m. on April 5, 2013 to 6 p.m. on April 7, 2013. It will be enforced from 6 a.m. to 6 p.m. each day (April 5, 6 and 7, 2013). Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM). If the event concludes prior to the scheduled termination time, the Captain of the Port will cease

enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander. The Patrol Commander may be contacted on VHF–FM Channel 23.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 20, 2013.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013–07745 Filed 4–2–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0807; FRL–9783–6]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ohio Ambient Air Quality Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the codification in an October 26, 2010, final rule under the Clean Air Act. This rule approved revisions to Ohio regulations that consolidated air quality standards in a new chapter of rules and adjusted the rule references accordingly in various related rules. Of particular note is a revision that adjusted the provision for measurements for comparison with the particulate matter air quality standards. EPA erroneously codified approval of the entirety of the rule, which may be misread as having inadvertently approved several other provisions which were not addressed in the October 26, 2010 final rule, and which EPA in separate rulemaking had proposed to disapprove. Therefore, EPA is correcting its action to clarify the codification to show that only one paragraph of this rule was approved. This action simply makes the codification consistent with the approval.

DATES: This final rule is effective on April 3, 2013.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 26, 2010, EPA published a final approval of Ohio rules consolidating the State's air quality standards into Ohio Administrative Code (OAC) 3745–25 and modifying an assortment of related rules, mostly providing test methods for measurements used to assess attainment of those standards, so that these related rules would properly reference the relocated air quality standard rules. This action was published at 75 FR 65572 as a direct final rule.

In codifying the approval of these rules, EPA erroneously appeared to approve the entirety of the modified rules, even though in some cases only one paragraph was addressed or modified. OAC 3745–17–03 included pertinent revisions in paragraph (A) specifying test methods for the particulate matter air quality standards. However, OAC 3745–17–03 also included numerous unrelated revisions that had not been previously approved, most notably including revisions that EPA had proposed to disapprove (see 70 FR 36901, published June 27, 2005). EPA's notice of direct final rulemaking published October 26, 2010, provided no discussion of the issues related to the other sections of OAC 3745–17–03, reflecting the fact that EPA intended only to approve and codify the revisions in OAC 3745–17–03(A). Therefore, EPA today is correcting the codification for that action to indicate that only OAC 3745–17–03(A) of that rule is approved. This makes the codification match the approval.

Correction

In the codification published in the **Federal Register** on October 26, 2010 (75 FR 65572), on page 65574 in the second column, the paragraph numbered (c)(138)(i)(A), erroneously reading: "Ohio Administrative Code Rule 3745–17–03 'Measurement methods and procedures.', effective April 18, 2009," is corrected to read: "Paragraph (A) of Ohio Administrative Code Rule 3745–17–03, 'Measurement methods and procedures.', effective April 18, 2009."

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is merely correcting an incorrect codification in a previous action. The corrected codification reflects the revisions that EPA approved in its direct final rule. We find that this constitutes good cause under 5 U.S.C. 553(b)(B). Thus, notice and opportunity for public comment are unnecessary.

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of April 3, 2013. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR 52 for Ohio is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 11, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1870 is amended by revising paragraph (c)(151)(i)(A) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(151) * * *

(i) * * *

(A) Paragraph (A) of Ohio Administrative Code Rule 3745–17–03, "Measurement methods and procedures.", effective April 18, 2009.

* * * * *

[FR Doc. 2013–07649 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0954; FRL–9796–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Emissions Budgets for the Pennsylvania Counties in the Philadelphia-Wilmington, PA–NJ–DE 1997 Fine Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). The revision consists of an update to the SIP-approved Motor Vehicle Emissions Budgets (MVEBs) for the Pennsylvania counties in the Philadelphia-Wilmington, PA–NJ–DE 1997 fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as the Philadelphia Area) to reflect the use of the most recent version of the Motor Vehicle Emission Simulator model (MOVES). The Pennsylvania counties impacted by this revision are: Philadelphia, Montgomery, Delaware, Chester, and Bucks Counties. EPA is approving this revision to the MVEBs and thereby making them available for transportation conformity purposes in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on April 3, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0954. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On February 15, 2013 (78 FR 11122), EPA published a Notice of Proposed Rulemaking (NPR) for Pennsylvania. The NPR proposed approval of the MVEBs for the Philadelphia Area. On November 6, 2012, the Pennsylvania Department of Environmental Protection (DEP) submitted to EPA a draft SIP revision which updates the Philadelphia Area's MVEBs to reflect the use of the MOVES model. On January 29, 2013, Pennsylvania DEP submitted its formal, final SIP revision to update the

Philadelphia Area's MVEBs to reflect the use of the MOVES model.

II. Summary of SIP Revision

The MVEBs are for $PM_{2.5}$ and nitrogen oxides (NO_X). The previously developed MVEBs for $PM_{2.5}$ and NO_X for the Philadelphia Area were approved as part of EPA's approval of Pennsylvania's 1997 $PM_{2.5}$ attainment plan on August 28, 2012 (77 FR 51930). The MVEBs were previously developed using Highway Mobile Source Emission Factor Model (MOBILE6.2) for the year 2009. The Philadelphia Area attainment demonstration documented that NO_X is the only significant precursor from on-road sources to the formation of $PM_{2.5}$ in the Philadelphia Area. A summary of the updated MOVES-based MVEBs and previously approved MOBILE6.2-based MVEBs for 2009 is provided in Table 1: Summary of MVEBs; the emissions for each pollutant are provided in tons per year (tpy). Also presented in Table 1 is a comparison between the 2002 base year inventory, which was produced by MOBILE6.2 and updated with MOVES, and the 2009 MVEBs. Even though there is an emissions increase in the MOVES-based MVEBs, the increase is not due to an increase in emissions from mobile sources. The increase is due to the fact that the MOVES model provides more accurate emissions estimates than MOBILE6.2 rather than growth that had not been anticipated in the attainment demonstration or changes to any control measures. Even though the MVEBs as calculated using MOVES result in a higher estimate of emissions, the MVEBs are consistent with requirements for attainment in the Philadelphia Area. This is because EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date, and because the area continues to meet the 1997 $PM_{2.5}$ NAAQS. Therefore, this update to the SIP-approved MVEBs to reflect the use of the MOVES model does not interfere with the Philadelphia Area's ability to continue to meet the 1997 $PM_{2.5}$ NAAQS. Additional rationale for EPA's action is explained in the NPR and will not be restated here. No public comments were received on the NPR.

TABLE 1—SUMMARY OF MVEBS

Model	MOBILE6.2		MOVES2010a	
Year	2002	2009	2002	2009
$PM_{2.5}$ (tpy)	1032.8	699.1	2,904.60	1,907.5
NO_X (tpy)	63,475.9	36,317.7	90,879.00	57,218.3

III. Final Action

EPA is approving Pennsylvania DEP's SIP revision request from January 29, 2013 to update the SIP-approved MVEBs for the Philadelphia Area to reflect the use of the MOVES model. EPA is approving this SIP revision because it will allow the Philadelphia Area to continue to meet the 1997 $PM_{2.5}$ NAAQS, and our in depth review of the SIP revision leads EPA to conclude that the updated MVEBs meet the adequacy requirements set forth in 40 CFR 93.118(e)(4)(i)–(vi), and the updated MVEBs have been correctly calculated to reflect the use of the MOVES model.

IV. Effective Date

EPA finds that there is good cause for this approval to become effective on the date of publication because this action will expedite the planning process for transportation conformity determinations. The updated MVEBs will be utilized for transportation conformity determinations, therefore making this revision effective on the date of publication will allow for expedited planning and preparation for transportation conformity determinations by the Delaware Valley Regional Planning Commission (DVRPC). This expedited planning will ensure that transportation conformity determinations will not be delayed. The expedited effective date for this action is authorized under section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." Ensuring that the updated MVEBs are available as soon as possible for use in making transportation conformity determinations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(3).

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action which updates Pennsylvania's SIP-approved MVEBs in the Philadelphia Area to reflect the use of the MOVES model may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter.

Dated: March 25, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by revising the entry for the "1997 $PM_{2.5}$ NAAQS Attainment Plan Demonstration, 2002 Base Year Emissions Inventory, Contingency Measures and Motor Vehicle Emission Budgets for 2009".

The revised text reads as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
1997 $PM_{2.5}$ NAAQS Attainment Demonstration, 2002 Base Year Emissions Inventory, Contingency Measures and Motor Vehicle Emission Budgets for 2009.	Pennsylvania portion of the Philadelphia–Wilmington, PA–NJ–DE $PM_{2.5}$ Nonattainment Area.	4/12/10, 8/3/12 1/29/13	8/27/12 77 FR 51930 4/3/13 [*Insert page number where the document begins*]	Revised 2009 Motor Vehicle Emission Budgets. The SIP effective date is April 13, 2013.
*	*	*	*	*

■ 3. Section 52.2053 is added to read as follows:

§ 52.2053 The Motor Vehicle Emissions Budgets for the Pennsylvania Counties in the Philadelphia-Wilmington, PA–NJ–DE 1997 Fine Particulate Matter Nonattainment Area

As of April 3, 2013, EPA approves the following revised 2009 Motor Vehicle Emissions Budgets (MVEBs) for fine particulate matter ($PM_{2.5}$) and nitrogen oxides (NO_X) for the Pennsylvania Counties in the Philadelphia-Wilmington, PA–NJ–DE 1997 $PM_{2.5}$ Nonattainment Area submitted by the Secretary of the Pennsylvania Department of Environmental Protection:

Applicable geographic area	Year	Tons per year NO_X	Tons per year $PM_{2.5}$
Pennsylvania Counties in the Philadelphia-Wilmington, PA–NJ–DE 1997 Fine Particulate Matter Nonattainment Area	2009	57,218.3	1,907.5

[FR Doc. 2013–07539 Filed 4–2–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0837; FRL–9797–1]

Approval and Promulgation of Implementation Plans; South Carolina: New Source Review-Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the South Carolina State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) to EPA in five separate SIP submittals dated May 1, 2012, July 18, 2011, February 16, 2011, December 23, 2009, and December 4, 2008. The SIP revisions make changes to South Carolina's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program to adopt federal PSD requirements regarding fine particulate matter ($PM_{2.5}$) and changes to the State's provisions related to the national ambient air quality standards (NAAQS) and volatile organic compounds (VOC). EPA is approving portions of the submittals as revisions to South Carolina's SIP because the Agency has determined that they are consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: *Effective Date:* This rule will be effective May 3, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0837. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the South Carolina SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; email address: *bradley.twunjala@epa.gov*. For information regarding NSR or PSD, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9241; email address: *adams.yolanda@epa.gov*. For information regarding the $PM_{2.5}$ NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; email address: *huey.joel@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

EPA is taking final action to approve multiple SIP submittals provided by SC DHEC to EPA on May 1, 2012,[1] July 18, 2011,[2] February 16, 2011,[3] December 23, 2009,[4] and December 4, 2008,[5] to adopt NSR permitting requirements for implementing the $PM_{2.5}$ NAAQS, federal changes to the NAAQS, an update to the federal definition for VOC, and an administrative correction to the State's VOC rule. On January 23, 2013, EPA proposed to approve these changes into the South Carolina SIP. *See* 78 FR 4796. Comments on the proposed rulemaking were due on or before February 22, 2013, and EPA received none. Details concerning each SIP submittal are provided in the docket for today's final action, Docket ID: EPA–R04–OAR–2012–0837. The SIP submittal changes are briefly summarized below. Please refer to EPA's January 23, 2013, proposed rulemaking for more detailed information for each SIP revision as well as the Agency's rationale for today's final rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to South Carolina's SIP.

A. SC DEHC Regulation 61–62.5, Standard No. 7—Prevention of Significant Deterioration

South Carolina's May 1, 2012, SIP submittal amends the State's PSD regulations at Regulation 61–62.5, Standard No. 7—*Prevention of Significant Deterioration* to adopt only the $PM_{2.5}$ PSD increments promulgated in the rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Mafter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)," Final Rule, 75 FR 64864, (October 20, 2010) (hereafter referred to as "$PM_{2.5}$ PSD Increments-SILs-SMC Rule"). The $PM_{2.5}$ PSD Increment-SILs-SMC Rule provided additional regulatory requirements under the PSD program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR including: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification

[1] South Carolina's May 1, 2012, submission to EPA also included changes to Regulation 61–62.63—National Emissions Standards for Hazardous Air Pollutants (NESHAP), which is not part of the South Carolina federally approved SIP.

[2] This SIP submittal also makes changes to South Carolina's SIP at Regulations 61–62.1—*Definitions and General Requirements;* 61–62.5, Standard 1—*Emissions from Fuel Burning Operations;* 61–62.5, Standard No. 4—*Emissions from Process Industries;* and 61–62.5, Standard 6—*Alternative Emission Limitation Options ("Bubble").* EPA will consider action on these changes to South Carolina's SIP in a separate rulemaking.

[3] This submittal also makes changes to South Carolina's State Regulations 61–62.60, 62.61, 62.63 and 62.72 regarding (New Source Performance Standards) (NSPS), NESHAP for Source Categories, and Acid Rain, respectively. However, these regulations are not part of South Carolina's federally approved SIP; therefore, EPA is not proposing action on these changes.

[4] This submittal also make changes to South Carolina's State Regulations 61–62.60, 62.61, 62.63 and 62.72 regarding NSPS, NESHAP and Acid Rain, respectively. However, these regulations are not part of South Carolina's federally approved SIP; therefore, EPA is not taking final action to approve these changes.

[5] This SIP submittal also included changes to SC DHEC's Regulation 61.62–96—*Nitrogen Oxides (NO_X)* and Sulfur Dioxide (SO_2) *Budget Trading Program General Provisions.* EPA took final action to approve this portion of the December 4, 2008, submittal on October 16, 2009 (74 FR 53167).

may have on the NAAQS or PSD increment; and (3) a SMC (also a screening tool) used by a major source subject to PSD to determine the subsequent level of $PM_{2.5}$ data gathering required for a PSD permit application. PSD increments prevent air quality in clean areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate "significant deterioration" [6] of air quality for a pollutant in an area. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility "will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant." When a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. As described in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical PSD increments for $PM_{2.5}$ as a new pollutant [7] for which NAAQS were established after August 7, 1977,[8] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III) using the "contingent safe harbor" approach. *See* 75 FR 64869 and the ambient air increment tables at 40 CFR 51.166(c)(1) and 52.21(c). In addition to PSD increments for the $PM_{2.5}$ NAAQS, the $PM_{2.5}$ PSD Increment-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for "*major source baseline date*" and "*minor source baseline date*" (including trigger date) to establish the $PM_{2.5}$ NAAQS specific dates associated with the implementation of $PM_{2.5}$ PSD increments. *See* 75 FR 64864. South Carolina's May 1, 2012, SIP submittal did not propose to adopt the SILs and SMC screening tools also promulgated in the $PM_{2.5}$ PSD Increments-SILs-SMC Rule.[9] Today's approval of changes to South Carolina's SIP regards only the PSD increment portions of EPA's $PM_{2.5}$ PSD Increments-SILs-SMC Rule.[10]

B. Regulation 61–62.5, Standard No. 2—Ambient Air Quality Standards

South Carolina's December 4, 2008, December 23, 2009, and July 18, 2011, SIP submissions, as well as the May 1, 2012, submission, all update South Carolina's ambient air quality standards table at Regulation 61–62.5, Standard No. 2—*Ambient Air Quality Standards* to be consistent with EPA's NAAQS at 40 CFR part 50 and table at *http://www.epa.gov/air/criteria.html*. The four SIP submittals amending SC DEHC's NAAQS table can be found in the docket for this proposed rulemaking at *www.regulations.gov* and are summarized below.

1. December 4, 2008, SIP Submittal

Amends the State's NAAQS table at Regulation 61–62.5, Standard No. 2 to address the amendment to the 24-hour primary NAAQS for $PM_{2.5}$ from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$ in accordance with EPA's October 17, 2006, revision of the $PM_{2.5}$ NAAQS. *See* 71 FR 61144.

2. December 23, 2009, SIP Submittal

This submittal revises the table at Regulation 61–62.5, Standard No. 2 to (1) add the 2008 8-hour ozone NAAQS of 75 parts per billion, (2) amend the lead [11] NAAQS to 0.15 $\mu g/m^3$ and (3) remove the 1-hour ozone NAAQS, which EPA revoked on June 15, 2005, one year after the effective date of the 1997 8-hour ozone designations. *See* 70 FR 44470 (August 3, 2005), 69 FR 23858 and 69 FR 23951(April 30, 2004).[12]

3. July 18, 2011, SIP Submittal [13]

This SIP revision clarifies at Regulation 61–62.5, Standard No. 2 that the carbon monoxide 1-hour and 8-hour average concentrations are not to be exceeded more than once a year (in accordance with 40 CFR 50.8) and adds a footnote referencing 40 CFR 50.16 for detailed explanation concerning calculation of the rolling 3-month average for the lead NAAQS.

4. May 1, 2012, SIP Submittal

This submittal removes from the table at Regulation 61–62.5, Standard No. 2 the coarse particulate matter (PM_{10}) annual standard to be consistent with EPA's October 17, 2006, revocation of the annual PM_{10} NAAQS. *See* 71 FR 61144. In addition, this SIP revision reformats the NAAQS table in an effort to ensure information found therein is consistent with EPA's NAAQS at 40 CFR 50 and the table at *http://www.epa.gov/air/criteria.html* including removing the table's footnotes and instead adding a column referencing the federal CFR for each NAAQS, streamlining the units column, and updating test method references.

C. Regulation 61–62.1—Definitions and General Requirements

South Carolina's December 4, 2008, and February 16, 2011, SIP submittals also amend the State's definition for VOC at Regulation 61–62.1—*Definitions*

[6] Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the "maximum allowable increase" of an air pollutant allowed to occur above the applicable baseline concentration for that pollutant. Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

[7] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQS with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for $PM_{2.5}$ as if $PM_{2.5}$ was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2012).

[8] EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

[9] As part of the response to comments on the October 20, 2010, final rulemaking, EPA explained that the Agency agrees that the SILs and SMCs used as *de minimis* thresholds for the various pollutants are useful tools that enable permitting authorities and PSD applicants to screen out "insignificant" activities; however, these values are not required by the Act as part of an approvable SIP program. EPA believes that most states are likely to adopt the SILs and SMCs because of the useful purpose they serve regardless of EPA's position that the values are not mandatory. Alternatively, states may develop more stringent values if they desire to do so. In any case, states are not under any SIP-related deadline for revising their PSD programs to add these screening tools. *See* 75 FR 64864, 64900.

[10] The Sierra Club challenged EPA's authority to implement the $PM_{2.5}$ SILs and SMC for PSD purposes as promulgated in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule. *See Sierra Club* v. *EPA*, Case No 10–1413 (D.C. Cir. January 22, 2013). On January 22, 2013, the court issued an order vacating and remanding to EPA for further consideration the portions of its $PM_{2.5}$ PSD Increment-SILs-SMC Rule addressing the $PM_{2.5}$ SILs, except for the parts codifying the $PM_{2.5}$ SILs in the NSR rule at 40 CFR 51.165(b)(2). The court also vacated parts of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule establishing the $PM_{2.5}$ SMC, finding that the Agency had exceeded its statutory authority with respect to these provisions. The D.C. Circuit Court's decision can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0837.

[11] On November 12, 2008, EPA revised the lead NAAQS from 1.5 $\mu g/m^3$ to 0.15 $\mu g/m^3$ based on a rolling 3-month average for both the primary and secondary standards. *See* 73 FR 66964.

[12] On June 15, 2005 (one year after the effective date of the 1997 8-hour ozone designations), EPA revoked the 1-hour ozone NAAQS for all areas except the 8-hour ozone nonattainment-deferred Early Action Compact (EAC) areas. The 1-hour ozone NAAQS for the EAC nonattainment-deferred areas, including those in South Carolina (Greenville-Spartanburg-Anderson, SC) and Central Midlands Columbia Area, was revoked on April 15, 2009 (one year after the effective date of the EAC areas' 8-hour ozone designations to attainment). *See* 64 FR 17897 (April 2, 2008), 69 FR 23858 and 69 23951 (April 30, 2004).

[13] These two revisions are superseded by SC DHEC's May 1, 2012, SIP submittal, which streamlines and reformats the State's NAAQS table at Regulation 61–62.5, Standard No. 2.

and General Requirements to include additional compounds 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE–7300) (as amended on January 18, 2007 (72 FR 2193)) and propylene carbonate and dimethyl carbonate (amended on January 21, 2009 (74 FR 3437)), respectively, to the list of compounds excluded from the definition of VOC on the basis that they have a negligible contribution to tropospheric formation of ozone to be consistent with the federal definition at 40 CFR 51.100(s).

D. Regulation 61–62.5, Standard 5—Volatile Organic Compounds

Lastly, the December 4, 2008, submittal makes an administrative correction to subparagraphs 2.a.(i)(a) and (b) of Regulation 61–62.5, Standard 5, Section II, Part Q (*Manufacture of Synthesized Pharmaceutical Products*) by adding the term and symbol "minus (−)" to express the outlet gas temperature threshold for surface condensers.

II. This Action

In this rulemaking EPA is taking final action to approve South Carolina's multiple SIP revisions to adopt the $PM_{2.5}$ increments, update the State's NAAQS table, update the definition for VOC and make an administrative correction. South Carolina's May 1, 2012, SIP submittal adopts $PM_{2.5}$ PSD increments revisions (pursuant to section 166(a) of the CAA) into the South Carolina SIP at Regulation 61–62.5, Standard No. 7 [14] as promulgated in the October 20, 2010, rule and codified at 40 CFR 51.166, including (1) addition of $PM_{2.5}$ PSD increments at SC DEHC's increments at Regulation 61–62.5, Standard No. 7 (c) and (p)(5)(for Class I variances) (consistent with the tables at 40 CFR 51.166(c)), including replacing the term "particulate matter" with "PM_{10}" in the tables at Regulation 61–62.5, Standard No. 7 paragraphs (c) and (p)(5) (for Class I Variances) and replacing the term "particulate matter" with "$PM_{2.5}$, PM_{10}" in the text at Regulation 61–62.5, Standard No. 7 paragraph (p)(5) (for Class I Variances); (2) revision to the definition at Regulation 61–62.5, Standard No. 7, paragraph (b)(31)(i)(a)–(c) for "*major source baseline date*" (consistent with 40 CFR 51.166(b)(14)(i)(a) and (c)), to establish major source baseline date for $PM_{2.5}$ and removing the term "particulate matter" to distinguish between PM_{10} and $PM_{2.5}$; Regulation 61–62.5, Standard No. 7, paragraph (b)(31)(ii)(a)–(c) for "*minor source baseline date,*" to establish the $PM_{2.5}$ "trigger date" (consistent with 40 CFR 51.166(b)(14)(ii)(c)) and remove the term "particulate matter" to distinguish between PM_{10} and $PM_{2.5}$; (3) revisions to Regulation 61–62.5, Standard No. 7, paragraph (5)(i) for "*baseline area*" (consistent with 40 CFR 51.166(b)(15)(i) and (ii)) to specify pollutant air quality impact annual averages and amend the regulatory reference for section 107(d) of the CAA at paragraph (5)(ii); and (4) amendment to Regulation 61–62.5, Standard No. 7 paragraph (b)(31)(iii)(a) to also amend the regulatory reference for section 107(d) of the CAA and to add a reference to 40 CFR 51.166. These changes provide for the implementation of the $PM_{2.5}$ PSD increments for the $PM_{2.5}$ NAAQS in South Carolina's PSD program.

EPA is also taking final action to approve South Carolina's changes to its Regulation 61–62.5, Standard No. 2—*Ambient Air Quality Standards* table submitted May 1, 2012, July 18, 2011, February 16, 2011, December 23, 2009, and December 4, 2008, SIP revisions. Lastly, EPA is taken final action to approve SC DEHC's changes to the definition of VOC at Regulation 61–62.1—*Definitions and General Requirements* and administrative correction at Regulation 61–62.5, Standard 5—*Volatile Organic Compounds.*

Notably, EPA is not taking action on multiple components of the above-referenced SIP submittals—those portions are outlined in Section I, Background, above.

III. Final Action

EPA is taking final action to approve portions of multiple SIP submissions revising South Carolina's SIP to adopt the $PM_{2.5}$ increments as amended in the October 20, 2010, $PM_{2.5}$ PSD Increments-SILs-SMC Rule, federal NAAQS updates and VOC definition updates, and to make an administrative correction. EPA has made the determination that these SIP submittals are approvable because they are consistent with section 110 of the CAA and EPA regulations regarding NSR permitting.

IV. Statutory and Executive Order Reviews

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

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

In addition, this rule does have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is approved to apply the PSD permitting program statewide including the Catawba Indian Nation in York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, "all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and

[14] South Carolina currently has a SIP-approved NSR program for new and modified stationary sources. SC DHEC's PSD preconstruction rules are found at Regulation 61–62.5, Standard No. 7—*Prevention of Significant Deterioration* and apply to major stationary sources or modifications constructed in areas designated attainment or unclassifiable/attainment as required under part C of title I of the CAA with respect to the NAAQS.

authorities." While this action revises South Carolina's existing NSR PSD permitting regulations in the SIP, EPA has determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: March 21, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart PP—South Carolina

■ 2. Section 52.2120 is amended at paragraph (c) by:

■ a. Under Regulation No. 62.1 revising the entry for "Section 1",

■ b. Under Regulation No. 62.5 revising the entry for "Standard No. 2",

■ c. Under Regulation No. 62.5, Standard No. 5, Section II revising the entry for "Part Q",

■ d. Under Regulation No. 62.5 revising the entry for "Standard No. 7", and

■ e. Revising the first "footnote 1" and removing the second "footnote 1" to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal Register notice
Regulation No. 62.1	Definitions and General Requirements.	6/26/1998	8/10/2004	69 FR 48395
Section I	Definitions	11/26/2010	4/3/13	[Insert citation of publication]
* * *	*	*	*	* * *
Regulation No. 62.5	Air Pollution Control Standards.			
* * *	*	*	*	* * *
Standard No. 2	Ambient Air Quality Standards.	4/27/2012	4/3/13	[Insert citation of publication]
* * *	*	*	*	* * *
Standard No. 5	Volatile Organic Compounds			
* * *	*	*	*	* * *
Section II	Provisions for Specific Sources.			
* * *	*	*	*	* * *
Part Q	Manufacture of Synthesized Pharmaceutical Products.	10/24/2008	4/3/13	[Insert citation of publication]
* * *	*	*	*	* * *
Standard No. 7	Prevention of Significant Deterioration[1].	4/27/2012	4/3/13	[Insert citation of publication]
* * *	*	*	*	* * *

[1] This regulation (submitted on April 14, 2009) includes the phrase "except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140," (at *Regulation 61–62.5, Standard No. 7(b)(32)(i)(a) and (iii)(b)(t), (42)(i)1(viii)(t) and Regulation 61–62.5, Standard No. 7.1(c)7(C)(xx) and (e)(T))* as amended in the Ethanol Rule. *See* 72 FR 24060 (May 1, 2007). EPA has not yet taken action to approve this phrase in the South Carolina SIP.

* * * * *

[FR Doc. 2013–07653 Filed 4–2–13; 8:45 a.m.]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0814; FRL–9797–4]

Approval and Promulgation of Implementation Plans; Florida; Prong 3 of Section 110(a)(2)(D)(i) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part, and disapprove in part, the State Implementation Plan (SIP) submissions, submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on April 18, 2008, and September 23, 2009. This final action addresses the Clean Air Act (CAA or Act) requirements pertaining to prevention of significant deterioration (PSD) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) infrastructure SIPs. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. EPA is approving in part, and disapproving in part, the submission for Florida that relates to adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. All other applicable infrastructure requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS associated with Florida have been addressed in separate rulemakings.

DATES: *Effective Date:* This rule will be effective May 3, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0814. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA promulgated a new annual $PM_{2.5}$ NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On December 5, 2012, EPA proposed to approve in part, and disapprove in part, Florida's submission addressing section 110(a)(2)(D)(i)(II) related to PSD. A summary of the background for today's final action is provided below. See EPA's December 5, 2012, proposed rulemaking (77 FR 72287) for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. However, in this action, EPA is only addressing element 110(a)(2)(D)(i)(II) related to PSD.

Section 110(a)(2)(D) has two components; 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4"). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

In previous actions, EPA has already taken action to address Florida's SIP submissions related to sections 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Today's final rulemaking action relates only to requirements related to prong 3 of section 110(a)(2)(D)(i), which as previously described, requires that the SIP contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent

significant deterioration of its air quality.

II. This Action

EPA is taking final action to approve in part, and disapprove in part Florida's infrastructure submissions as demonstrating that the State meets the applicable requirements of prong 3 of section 110(a)(2)(D)(i) of the CAA, that relate to adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP.

On December 5, 2012, EPA proposed to approve in part, and disapprove in part, Florida's April 18, 2008, and September 23, 2009, infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, addressing prong 3 of section 110(a)(2)(D)(i). At present, there are four regulations that are required to be adopted into the SIP to meet the PSD-related infrastructure requirements. Of these four regulations EPA has approved the following three into the Florida SIP.

1. EPA's approval of Florida's PSD/New Source Review (NSR) regulations which address the Ozone Implementation NSR Update requirements was published in the **Federal Register** on June 15, 2012 (77 FR 35862).

2. EPA's approval of Florida's NSR $PM_{2.5}$ Rule was published in the **Federal Register** on September 19, 2012 (77 FR 58027).

3. EPA's approval of Florida's PSD/$PM_{2.5}$ approving $PM_{2.5}$ increments was published in the **Federal Register** on September 19, 2012 (77 FR 58027).

These three approval actions demonstrate that Florida's SIP-approved PSD program meets three of the four required regulatory elements necessary to satisfy prong 3 of section 110(a)(2)(D)(i). See EPA's December 5, 2012, proposed rule (77 FR 72287) for more detail.

With respect to the fourth necessary PSD regulatory element—the Greenhouse Gas (GHG) Tailoring Rule—Florida did not submit a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule. Therefore, Florida's federally-approved SIP contained errors that resulted in its failure to address, or provide adequate legal authority for, the implementation of a GHG PSD program in Florida. In the GHG SIP Call,[1] EPA determined that the State of Florida's SIP was substantially inadequate to achieve CAA requirements because its existing PSD program does not apply to GHG-emitting sources. This rule finalized a SIP call for 15 state and local permitting authorities including Florida. EPA explained that if a state, identified in the SIP call, failed to submit the required corrective SIP revision by the applicable deadline, EPA would promulgate a Federal Implementation Plan (FIP) under CAA section 110(c)(1)(A) for that state to govern PSD permitting for GHG. On December 30, 2010, EPA promulgated a FIP[2] because Florida failed to submit, by its December 22, 2010, deadline, the corrective SIP revision to apply its PSD program to sources of GHG consistent with the thresholds described in the GHG Tailoring rule. The FIP ensured that a permitting authority (*i.e.*, EPA) would be available to issue preconstruction PSD permits to GHG-emitting sources in the State of Florida. EPA took these actions through interim final rulemaking, effective upon publication, to ensure the availability of a permitting authority—EPA—in Florida for GHG-emitting sources when those sources became subject to PSD on January 2, 2011.

The Florida SIP currently does not provide adequate legal authority to address the GHG PSD permitting requirements at or above the levels of emissions set forth in the GHG Tailoring Rule, or at other appropriate levels. As a result, EPA has determined that the Florida SIP does not satisfy a portion of prong 3 of section 110(a)(2)(D)(i) for the 1997 and 2006 $PM_{2.5}$ infrastructure requirements. Therefore, EPA is disapproving FDEP's submission for prong 3 of section 110(a)(2)(D)(i) as it relates relate to GHG PSD permitting requirements. EPA's disapproval of this element does not result in any further obligation on the part of Florida, because EPA has already promulgated a FIP for the Florida PSD program to address permitting GHG at or above the GHG Tailoring Rule thresholds. *See* 76 FR 25178. Thus, today's final action to approve in part, and disapprove in part, FDEP's submission for prong 3 of section 110(a)(2)(D)(i), will not require any further action by either FDEP or EPA.

EPA received one comment on its December 5, 2012, proposed rulemaking. The Commenter wanted "to congratulate EPA workers for trying to decrease particles and increase the public's health." This comment does not appear to be related to the issues presented in the proposed rulemaking, and instead, appears related to a wholly separate topic—promulgation of the PM NAAQS. EPA does not interpret this comment as relevant to the topic of EPA's December 5, 2012, proposed action. Instead, EPA interprets this comment as being off-topic and outside of the scope of today's final rulemaking.

III. Final Action

As described above, EPA is approving in part, and disapproving in part, the SIP submission from Florida to incorporate provisions into the State's implementation plan to address prong 3 of section 110(a)(2)(D)(i) of the CAA for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Specifically, EPA is approving the State's prong 3 of section 110(a)(2)(D)(i) submissions as they relate to the "Phase II Rule," the "NSR $PM_{2.5}$ Rule," and the "$PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ increments)" because they are consistent with section 110 of the CAA. EPA also is disapproving Florida's submissions for the portion of the section 110(a)(2)(D)(i) prong 3 requirements related to the regulation of GHG emissions for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

EPA notes that on September 19, 2012, the Agency approved the Significant Monitoring Concentration (SMC) portion of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule into the SIPs for Florida. *See* 77 FR 58027. Since that time, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA*, No. 10–1413, 2013 WL 216018 (Jan. 22, 2013), issued a judgment that, *inter alia*, vacated the provisions adding the $PM_{2.5}$ SMC to the federal regulations, at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), that were promulgated as part of the 2010 $PM_{2.5}$ PSD Increment-SILs-SMC Rule. In its decision, the court held that EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus,

[1] "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call, Final Rule" 75 FR 77698 (December 13, 2010).

[2] "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Final Rule" 75 FR 82246 (December 30, 2010).

although the $PM_{2.5}$ SMC was not a required element of a State's PSD program and thus not a structural requirement for purposes of infrastructure SIPs, were a SIP-approved PSD program that contains such a provision to use that provision to issue new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the SIP would be inconsistent with the court's opinion and the requirements of section 165(e)(2) of the CAA.

Given the clarity of the court's decision, it would now be inappropriate for Florida to continue to allow applicants for any pending or future PSD permits to rely on the $PM_{2.5}$ SMC in order to avoid compiling ambient monitoring data for $PM_{2.5}$. Because of the vacatur of EPA regulations, the SMC provisions, included in Florida's SIP-approved PSD programs on the basis of EPA's regulations are unlawful and no longer enforceable by law. Permits issued on the basis of these provisions as they appear in the approved SIP would be inconsistent with the CAA and difficult to defend in administrative and judicial challenges. Thus, the SIP provisions may not be applied even prior to their removal from the SIP. Florida should instead require applicants requesting a PSD permit, including those having already been applied for but for which the permit has not yet been received, to submit ambient $PM_{2.5}$ monitoring data in accordance with the CAA requirements whenever either direct $PM_{2.5}$ or any $PM_{2.5}$ precursor is emitted in a significant amount.[3] As the previously-approved $PM_{2.5}$ SMC provisions in the Florida SIP are no longer enforceable, EPA does not believe the existence of the provisions in the State's implementation plan precludes today's approval of the infrastructure SIP submissions as they relate to prong 3 of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

EPA intends to initiate a rulemaking to correct SIPs that were approved with regard to the $PM_{2.5}$ SMC prior to the court's decision. EPA also advises Florida to begin preparations to remove the $PM_{2.5}$ provisions from its state PSD regulations and SIP. However, EPA has not yet set a deadline requiring states to take action to revise their existing PSD programs to address the court's decision.

EPA notes that on January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA*, No. 08–1250, 2013 WL 45653 (D.C. Cir., filed July 15, 2008) (consolidated with 09–1102, 11–1430), issued a judgment that remanded EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at *8. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)," 73 FR 28321 (May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 rule in order to comply with the court's decision. Accordingly, EPA's actions for the Florida infrastructure SIPs as related to element (D)(i)(II) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due 3 years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

IV. Statutory and Executive Order Reviews

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

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

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

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

[3] In lieu of the applicants' need to set out $PM_{2.5}$ monitors to collect ambient data, applicants may submit $PM_{2.5}$ ambient data collected from existing monitoring networks when the permitting authority deems such data to be representative of the air quality in the area of concern for the year preceding receipt of the application. EPA believes that applicants will generally be able to rely on existing representative monitoring data to satisfy the monitoring data requirement.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: March 26, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K—Florida

■ 2. Section 52.520(e) is amended by adding two new entries for "110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards" and "110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards" at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** notice	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	4/18/2008	4/3/2013	[Insert citation of publication]	EPA disapproved the State's prong 3 of section 110(a)(2)(D)(i) as it relates to GHG PSD permitting requirements.
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	9/23/2009	4/3/2013	[Insert citation of publication]	EPA disapproved the State's prong 3 of section 110(a)(2)(D)(i) as it relates to GHG PSD permitting requirements.

[FR Doc. 2013–07654 Filed 4–2–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket No.: EPA–R10–OAR–2012–0017; FRL–9796–5]

Approval and Promulgation of Implementation Plans; Idaho: Sandpoint PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving in part and disapproving in part the Limited Maintenance Plan (LMP) submitted by the State of Idaho on December 14, 2011, for the Sandpoint nonattainment area (Sandpoint NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), and approving the State's request to redesignate this area to attainment for the PM_{10} National Ambient Air Quality Standards (NAAQS). The EPA is disapproving a separable part of the Sandpoint NAA LMP that does not meet LMP eligibility criteria or applicable requirements under the Clean Air Act (CAA). The part of the Sandpoint NAA LMP that the EPA is approving complies with applicable requirements and meets the requirements of the CAA for full approval. The EPA is also approving the State's redesignation request because it meets CAA requirements for redesignation.

DATES: This final rule is effective on May 3, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2012–0017. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

I. Background

On July 1, 1987, the EPA promulgated National Ambient Air Quality Standards (NAAQS) for particulate matter with a nominal aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) (52 FR 24634). The EPA established a 24-hour standard of 150 $\mu g/m^3$ and an annual standard of 50 $\mu g/m^3$, expressed as an annual arithmetic mean. The EPA also promulgated secondary PM_{10} standards that were identical to the primary standards. In a rulemaking action dated October 17, 2006, the EPA retained the 24-hour PM_{10} standard but revoked the annual PM_{10} standard (71 FR 61144, effective December 18, 2006).

On August 7, 1987, the EPA designated the Sandpoint area as a PM_{10} nonattainment area due to measured violations of the 24-hour PM_{10} standard (52 FR 29383). The notice announcing the designation upon enactment of the 1990 CAA Amendments was published on March 15, 1991 (56 FR 11101). On November 6, 1991, the Sandpoint nonattainment area (Sandpoint NAA) was subsequently classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA (56 FR 56694).

After the Sandpoint NAA was designated nonattainment for PM_{10}, the State worked with the communities of Sandpoint, Kootenai, and Ponderay to develop a plan to bring the area into attainment no later than December 31, 1996. The State submitted the plan to the EPA on August 16, 1996, as a moderate PM_{10} State Implementation Plan (SIP) under section 189(a) of the CAA. The moderate PM_{10} SIP included a comprehensive residential wood combustion program, controls on fugitive road dust and emission limitations on industrial sources. The EPA took final action to approve the Sandpoint moderate PM_{10} SIP on June 26, 2002 (67 FR 43006). Subsequently on June 22, 2010, the EPA determined that the Sandpoint NAA attained the PM_{10} NAAQS (75 FR 35302).

On December 14, 2011, the State submitted to the EPA the Sandpoint PM_{10} Limited Maintenance Plan (LMP) and requested that the EPA redesignate the Sandpoint NAA to attainment for the PM_{10} NAAQS. The State also requested to revise control measures in the Sandpoint PM_{10} SIP. On February 1, 2013, the EPA published a Notice of Proposed Rulemaking (NPR) addressing the State's December 14, 2011 submittal (78 FR 7340). In the NPR, the EPA proposed to approve in part and disapprove in part the Sandpoint NAA LMP submitted by the State and to approve the State's request to redesignate this area to attainment for the PM_{10} NAAQS. A detailed description of the proposed partial approval and partial disapproval can be found in the NPR. The EPA provided a 30-day review and comment period on the NPR, published on February 1, 2013 (78 FR 7340). The public comment period for the EPA's NPR closed on March 4, 2013. The EPA received no comments on the proposed action.

II. Final Action

The EPA is approving in part and disapproving in part the Sandpoint NAA LMP submitted by the State on December 14, 2011, and approving the State's request to redesignate this area to attainment for the PM_{10} NAAQS. The Sandpoint NAA LMP submittal included a request to approve revisions to the control measures included in the PM_{10} attainment SIP for the Sandpoint NAA. The EPA is approving the revised Sandpoint City Ordinance 965 for control of residential burning because it strengthens the SIP. The EPA is also approving the State's request to remove the Louisiana-Pacific Corporation—Sandpoint operating permit control measure from the SIP because the facility has ceased operations and has been dismantled. However, the EPA is disapproving the State's request to remove the operating permits for two other sources because these sources are still in operation and the State did not provide a demonstration that removal of the two permits would not interfere with attainment or maintenance of the NAAQS. In addition, the removal of controls that were relied on to demonstrate attainment would disqualify the Sandpoint NAA for LMP eligibility and require that the State submit a full maintenance plan. Because the State submitted the Sandpoint NAA LMP intending to qualify for the LMP option, and did not submit a full maintenance plan, the EPA is disapproving the separable portion of the submittal that is not consistent with the LMP qualifying criteria. This partial disapproval does not prevent the State from submitting a request for approval of a SIP revision demonstrating that the removal of the two operating permits does not interfere with attainment or maintenance of the NAAQS.

The EPA's partial disapproval will be simultaneously corrected because the EPA is, in this same action, fully approving the Sandpoint NAA LMP with all control measures in place. Therefore, a fully approved LMP is in place and no further submittal is required from the State to address the partial disapproval.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 Clean Air Act; and
- Does not provide the 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 the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the 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 June 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate Matter, and Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: March 18, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR parts 52 and 81 are 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 N—Idaho

■ 2. Section 52.670 is amended by:

■ a. In paragraph (c) by removing the entry for "City of Sandpoint Ordinance No. 965" and adding in its place the following entry for "City of Sandpoint Chapter 8 Air Quality (4–8–1 through 4–8–14)."

■ b. In paragraph (d) by removing the entry for "Louisiana Pacific Corporation, Sandpoint, Idaho."

■ c. In paragraph (e) by adding an entry to the end of the table.

The additions read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
City and County Ordinances				
*	*	*	*	*
City of Sandpoint Chapter 8 Air Quality (4–8–1 through 4–8–14).	Solid Fuel Heating Appliances.	09/21/11 (City adoption date).	04/03/13 ..... [Insert page number where the document begins].	Codified version of City of Sandpoint Ordinance No. 965 as amended by Ordinance No. 1237 and Ordinance No. 1258. Sandpoint PM_{10} Limited Maintenance Plan.
*	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State Submittal date	EPA approval date	Comments
*	*	*	*	*
Sandpoint PM_{10} Nonattainment Area Limited Maintenance Plan.	Bonner County: Sandpoint Area.	12/14/2011	04/03/2013 ..... [Insert page number where the document begins].	

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.313, the table entitled "Idaho-PM–10" is amended by revising the entry for "Bonner County: Sandpoint Area" to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO-PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*		*
Bonner County: Sandpoint Area: Section 1–3, 9–12, 15, 16, 21, 22, 27, 28 of range 2 west and Township 57 north; and the western ½ of Sections 14, 23 and 26 of the same Township and range coordinates.	06/3/13	Attainment		
* * * *	*	*		*

* * * * *

[FR Doc. 2013–07647 Filed 4–2–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2011–0354; FRL–9797–5]

RIN 2060–AQ98

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: EPA is adjusting the allowance system controlling U.S. consumption and production of hydrochlorofluorocarbons (HCFCs) as a result of a 2010 Court decision vacating a portion of the 2009 final rule titled "Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export." EPA interprets the Court's vacatur as applying to the part of the rule that establishes the company-by-company baselines and calendar year allowances for HCFC–22 and HCFC–142b. On August 5, 2011, EPA published an interim final rule allocating allowances for 2011. Today's action relieves the regulatory ban on production and consumption of these two chemicals following the Court's vacatur by establishing company-by-company HCFC–22 and HCFC–142b baselines and allocating production and consumption allowances for 2012–2014.

DATES: This final rule is effective April 3, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0354. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Luke H. Hall-Jordan by telephone at (202) 343–9591, or by email at *hall-jordan.luke@epa.gov*, or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave. NW., Washington, DC 20460. You may also visit the Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION:

Effective Date. This rule concerns Clean Air Act (CAA) restrictions on the consumption and production of hydrochlorofluorocarbon (HCFC)-22 and HCFC–142b during 2012–2014. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective April 3, 2013. APA section 553(d) allows an effective date less than 30 days after publication for any action "that grants or recognizes an exemption or relieves a restriction," (5 U.S.C. 553(d)(1)). Since today's action relieves a restriction from the regulatory ban on the production and consumption of HCFC–22 and HCFC–142b in the U.S., EPA is making this action effective immediately upon publication to ensure the availability of these HCFCs for servicing air conditioning and refrigeration equipment.

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

CAA—Clean Air Act
CAAA—Clean Air Act Amendments of 1990
CFC—Chlorofluorocarbon
CDM—Clean Development Mechanism
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FR—**Federal Register**
HCFC—Hydrochlorofluorocarbon
HVAC—Heating, Ventilating, and Air Conditioning
Montreal Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*

MOP—Meeting of the Parties
MT—Metric Ton
ODP—Ozone Depletion Potential
ODS—Ozone-Depleting Substances
Party—States and regional economic integration organizations that have consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. Does this action apply to me?

This rule may affect the following categories:

—Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gases manufacturers and reclaimers;
—Other Chemical and Allied Products Merchant Wholesalers (NAICS code 422690), including chemical gases and compressed gases merchant wholesalers;
—Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing entities (NAICS code 333415), including air-conditioning equipment and commercial and industrial refrigeration equipment manufacturers;
—Air-Conditioning Equipment and Supplies Merchant Wholesalers (NAICS code 423730), including air-conditioning (condensing unit, compressors) merchant wholesalers;
—Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers (NAICS code 423620), including air-conditioning (room units) merchant wholesalers; and
—Plumbing, Heating, and Air-Conditioning Contractors (NAICS code 238220), including central air-conditioning system and commercial refrigeration installation; HVAC contractors.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Summary of This Final Action

In today's final rule, EPA is issuing HCFC–22 and HCFC–142b allowances for the years 2012, 2013 and 2014 in the wake of the U.S. Court of Appeals for the District of Columbia Circuit (Court) decision in *Arkema* v. *EPA* (618 F.3d 1, D.C. Cir. 2010). As discussed in this preamble and in the proposed rule (77 FR 237), the Court vacated HCFC–22 and HCFC–142b company-by-company baseline and calendar-year allowances for 2012–2014. Baselines and calendar-year allowances for these two substances were originally finalized in a December 15, 2009, rule ("2009 Final Rule," 74 FR 66412).

EPA is finalizing HCFC–22 and HCFC–142b baseline allowances that incorporate the inter-pollutant transfers made by Arkema, Inc., Solvay Fluorides, LLC, and Solvay Solexis, Inc., (Arkema and Solvay) in 2008, and is setting calendar-year allowances for the 2012–2014 control periods. EPA is providing fewer calendar-year HCFC–22 consumption allowances [1] and more calendar-year HCFC–22 production allowances [2] than in the 2009 Final Rule. The agency determined that the need for virgin HCFC–22 in the U.S. is lower than EPA anticipated in the 2009 Final Rule and is adjusting consumption allowances accordingly. EPA anticipates this adjustment will foster a smooth transition away from ozone-depleting HCFC–22. While EPA is reducing domestic consumption (i.e. production and import for U.S. use), under the recalculated baselines, the overall production allowances will increase. Because other countries have different approaches to phasing out HCFC–22, EPA considers that this increase in the number of production allowances will also ensure that U.S. companies can continue to meet demand for HCFCs in global markets. This supports the

[1] Consumption allowances permit an entity to produce and/or import virgin HCFCs in a given control period (i.e., calendar year).

[2] Production allowances permit an entity to produce virgin HCFCs in a given control period. Domestic production of HCFCs requires the use of both production and consumption allowances.

Montreal Protocol's overall goal of limiting need for new production capacity for controlled chemicals by allowing existing producers scope to better meet the needs of global markets. Additionally, EPA has determined that in the narrow circumstance of the Court's vacatur of the baselines in the 2009 Final Rule, it must provide meaningful compensation for 2010 calendar-year HCFC–22 and HCFC–142b allowances that companies would have received under the adjusted baselines. EPA will issue recoupment allowances for that purpose in 2013 and 2014.

EPA is also updating HCFC–142b baselines and annual allowances and is allocating approximately the same amount of calendar-year consumption allowances as in the 2009 Final Rule. Due to the recalculation of HCFC–142b baselines, calendar-year HCFC–142b production allowances are higher than in the 2009 Final Rule, but have been calculated using the same methodology. Therefore, while the percentage of baseline issued for HCFC–142b is the same for both consumption and production allowances, the recalculated production baseline is now significantly larger than the consumption baseline, resulting in an overall increase in calendar-year production allowances compared with the 2009 Final Rule.

Finally, EPA is modifying the transfer language at 40 CFR 82.23 to more explicitly reflect EPA's policy on inter-pollutant HCFC allowance transfers; that is, that inter-pollutant HCFC transfers can occur only on an annual basis going forward.

All other aspects of the 2009 Final Rule not addressed in this rulemaking are unaffected, including, but not limited to: HCFC–123, HCFC–124, HCFC–225ca and HCFC–225cb allowances, the formula for determining calendar-year Article 5 allowances, and the use and introduction into interstate commerce restrictions on HCFC–22 and HCFC–142b. This preamble includes a summary of comments EPA received in response to the proposed rule, as well as comments to the 2011 Interim Final Rule that are relevant to this current rulemaking. A full response to comments document ("Response to Comments") is available in the docket for this rulemaking.

III. Background

EPA is undertaking this rulemaking as a result of the decision issued by the Court in *Arkema* v. *EPA* (618 F.3d 1, D.C. Cir. 2010) regarding the December 15, 2009, final rule titled "Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export," ("2009 Final Rule," 74 FR 66412). Certain allowance holders affected by the 2009 Final Rule filed petitions for judicial review of the rule under section 307(b) of the Clean Air Act. Among other arguments, the petitioners contended that the rule was impermissibly retroactive because in setting the baselines for the new regulatory period, EPA did not take into account certain inter-pollutant baseline transfers that petitioners had performed during the prior regulatory period.

The Court issued a decision on August 27, 2010, agreeing with petitioners that "the [2009] Final Rule unacceptably alters transactions the EPA approved under the 2003 Rule," (*Arkema* v. *EPA*, 618 F.3d at 3). The Court vacated the 2009 Final Rule in part, "insofar as it operates retroactively," and remanded it to EPA "for prompt resolution," (618 F.3d at 10). The Court withheld the mandate for the decision pending the disposition of any petition for rehearing. EPA's petition for rehearing was denied on January 21, 2011. The mandate issued on February 4, 2011. More detail is provided on the case and EPA's interpretation of the Court's decision in section III.D. of this preamble.

For 2011, EPA addressed the Court's partial vacatur in an August 5, 2011, interim final rule, "Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export," ("2011 Interim Final Rule," 76 FR 47451). Today's final rule follows that action, and establishes a path forward for the remainder of the regulatory period ending on December 31, 2014.

A. How does the Montreal Protocol phase out HCFCs?

The Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) is the international agreement aimed at reducing and eventually eliminating the production and consumption of stratospheric ozone-depleting substances (ODS). The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the U.S. could satisfy its obligations under the Montreal Protocol. Title VI includes restrictions on production, consumption, and use of ODS that are subject to acceleration if "the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use * * * more rapidly than the applicable schedule" prescribed by the statute (CAA § 606). Both the Montreal Protocol and the Clean Air Act (CAA) define consumption as production plus imports minus exports.

In 1990, as part of the London Amendment to the Montreal Protocol, the Parties identified HCFCs as "transitional substances" to serve as temporary, lower ozone depletion potential (ODP) substitutes for CFCs and other ODS. EPA similarly viewed HCFCs as "important interim substitutes that will allow for the earliest possible phaseout of CFCs and other Class I substances" [3] (58 FR 65026). In 1992, through the Copenhagen Amendment to the Montreal Protocol, the Parties created a detailed phaseout schedule for HCFCs beginning with a cap on consumption for industrialized countries not operating under Article 5 of the Montreal Protocol (non-Article 5 Parties), a schedule to which the U.S. adheres. The consumption cap for each non-Article 5 Party was set at 3.1 percent (later tightened to 2.8 percent) of a Party's CFC consumption in 1989, plus a Party's consumption of HCFCs in 1989 (weighted on an ODP basis). Based on this formula, the HCFC consumption cap for the U.S. was 15,240 ODP-weighted metric tons (MT), effective January 1, 1996. This became the U.S. consumption baseline for HCFCs.

The 1992 Copenhagen Amendment created a schedule of graduated reductions and provided for the eventual phaseout of HCFC consumption (Copenhagen, 23–25 November, 1992, Decision IV/4). Prior to a later adjustment in 2007, the schedule initially allowed a non-Article 5 country to consume 65 percent of its consumption cap in 2004, followed by 35 percent in 2010, 10 percent in 2015, 0.5 percent in 2020 for the servicing of existing refrigeration and air-conditioning equipment, and a total phaseout in 2030.

The Copenhagen Amendment did not cap HCFC production. In 1999, the Parties created a cap on production for non-Article 5 Parties through an amendment to the Montreal Protocol agreed by the Eleventh Meeting of the Parties (Beijing, 29 November—3 December, 1999, Decision XI/5). The cap on production was set at the average of: (a) 1989 HCFC production plus 2.8 percent of 1989 CFC production, and (b) 1989 HCFC consumption plus 2.8

[3] Class I refers to the controlled substances listed in appendix A to 40 CFR part 82 subpart A. Class II refers to the controlled substances listed in appendix B to 40 CFR part 82 subpart A.

percent of 1989 CFC consumption. Based on this formula, the U.S. HCFC production cap was 15,537 ODP-weighted MT, effective January 1, 2004. This became the U.S. production baseline for HCFCs.

To further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol's phaseout schedule for HCFCs at the 19th Meeting of the Parties in September 2007. In accordance with Article 2(9)(d) of the Montreal Protocol, the adjustment to the phaseout schedule was effective on May 14, 2008.[4]

As a result of the 2007 Montreal Adjustment (reflected in Decision XIX/6), the U.S. and other non-Article 5 countries may only consume 25 percent of their HCFC baseline beginning in 2010, rather than 35 percent. Other milestones remain the same. The adjustment also resulted in a phaseout schedule for HCFC production that parallels the consumption phaseout schedule. All production and consumption for non-Article 5 Parties is phased out by 2030.

Decision XIX/6 also adjusted the provisions for Parties operating under paragraph 1 of Article 5 (developing countries): (1) To set HCFC production and consumption baselines based on the average of 2009–2010 production and consumption, respectively; (2) to freeze HCFC production and consumption at those baselines in 2013; and (3) to add stepwise reductions to 90 percent of baseline by 2015, 65 percent by 2020, 32.5 percent by 2025, and 2.5 percent by 2030—allowing, between 2030 and 2040, an annual average of no more than 2.5 percent to be produced or imported solely for servicing existing air-conditioning and refrigeration equipment. All production and consumption for Article 5 Parties will be phased out by 2040. Decision XIX/6, included in the *Report of the Nineteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer*, is available in the docket for this rulemaking.

In addition, in the Montreal Adjustments, Parties agreed to adjust Article 2F to allow non-Article 5 countries to produce "up to 10 percent of baseline levels" for export to Article 5 countries "in order to satisfy basic domestic needs" until 2020. Paragraph 14 of Decision XIX/6 notes that by no later than 2015, the Parties would consider "further reduction of production for basic domestic needs" in 2020 and beyond. Under paragraph 13 of Decision XIX/6, the Parties will review in 2015 and 2025, respectively, the need for the "servicing tails" for non-Article 5 and Article 5 countries. The term "servicing tail" refers to an amount of HCFCs needed to service existing equipment, such as certain types of air-conditioning and refrigeration appliances.

B. How does the Clean Air Act phase out HCFCs?

The U.S. has chosen to implement the Montreal Protocol phaseout schedule on a chemical-by-chemical basis. In 1992, environmental and industry groups petitioned EPA to implement the required phaseout by eliminating the most ozone-depleting HCFCs first. Based on the available data at that time, EPA believed the U.S. could meet, and possibly exceed, the required Montreal Protocol reductions through a chemical-by-chemical phaseout that employed a "worst-first" approach, which focuses on phasing out certain chemicals with higher ODP earlier than others. In 1993, as authorized by section 606 of the CAA, the U.S. established a phaseout schedule that eliminated HCFC–141b first and would greatly restrict HCFC–142b and HCFC–22 next, followed by restrictions on all other HCFCs and ultimately a complete phaseout (58 FR 15014, March 18, 1993; 58 FR 65018, December 10, 1993).

On January 21, 2003, EPA promulgated regulations ("2003 Final Rule," 68 FR 2820) to ensure compliance with the first reduction milestone in the HCFC phaseout: the requirement that by January 1, 2004, the U.S. reduce HCFC consumption by 35 percent and freeze HCFC production. In the 2003 Final Rule, EPA established chemical-specific consumption and production baselines for HCFC–141b, HCFC–22, and HCFC–142b for the initial regulatory period ending December 31, 2009. Section 601(2) states that EPA may select "a representative calendar year" to serve as the company baseline for HCFCs. In the 2003 Final Rule, EPA concluded that because the entities eligible for allowances had differing production and import histories, no single year was representative for all companies. Therefore, EPA assigned an individual consumption baseline year to each company by selecting its highest ODP-weighted consumption year from among the years 1994 through 1997. EPA assigned individual production baseline years in the same manner. EPA also provided for new entrants that began importing after the end of 1997 but before April 5, 1999, the date the advanced notice of proposed rulemaking was published. EPA took this action to ensure that small businesses that might not have been aware of the impending rulemaking would be able to continue in the HCFC market.

The 2003 Final Rule apportioned production and consumption baselines to each company in amounts equal to the company's highest "production year" or "consumption year," as described above. It completely phased out the production and import of HCFC–141b by granting zero percent of that substance's baseline for production and consumption in the table at 40 CFR 82.16. EPA did, however, create a petition process to allow applicants to request small amounts of HCFC–141b until 2015. The 2003 Final Rule also granted 100 percent of the baselines for production and consumption of HCFC–22 and HCFC–142b for each of the years 2003 through 2009. EPA was able to allocate allowances for HCFC–22 and HCFC–142b at 100 percent of baseline because, in light of the concurrent complete phaseout of HCFC–141b, the allocations for HCFC–22 and HCFC–142b, combined with projections for consumption of all other HCFCs, remained below the 2004 cap of 65 percent of the U.S. baseline.

EPA allocates allowances for specific years; they are valid between January 1 and December 31 of a given control period (i.e., calendar year). Prior to December 15, 2009, EPA had not allocated any HCFC allowances for 2010 or beyond. The regulations at section 82.15(a) and (b) only addressed the production and import of HCFC–22 and HCFC–142b for the years 2003–2009. Absent the granting of calendar-year allowances, section 82.15 would have prohibited the production and import of HCFC–22 and HCFC–142b after December 31, 2009. The 2009 Final Rule allowed for continued production and consumption, at specified amounts, of HCFC–142b, HCFC–22, and other HCFCs not previously included in the allowance system, for the 2010–2014 control periods.

In the U.S., an allowance is the unit of measure that controls production and consumption of ODS. EPA establishes company-by-company baselines (also known as "baseline allowances") and allocates calendar-year allowances equal to a percentage of the baseline for specified control periods. A calendar-

[4] Under Article 2(9)(d) of the Montreal Protocol, an adjustment enters into force six months from the date the depositary (the Ozone Secretariat) circulates it to the Parties. The depositary accepts all notifications and documents related to the Protocol and examines whether all formal requirements are met. In accordance with the procedure in Article 2(9)(d), the depositary communicated the adjustment to all Parties on November 14, 2007. The adjustment entered into force and became binding for all Parties on May 14, 2008.

year allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific substance. EPA allocates two types of calendar-year allowances—production allowances and consumption allowances. "Production allowance" and "consumption allowance" are defined at section 82.3. To produce an HCFC for which allowances have been allocated, an allowance holder must expend both production and consumption allowances. To import an HCFC for which allowances have been allocated, an allowance holder must expend consumption allowances. An allowance holder exporting HCFCs for which it has expended consumption allowances may request a refund of those consumption allowances by submitting proper documentation and receiving approval from EPA.

Since EPA is implementing the phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. Upon EPA approval, an allowance holder may transfer calendar-year allowances of one type of HCFC for calendar-year allowances of another type of HCFC, with transactions weighted according to the ODP of the chemicals involved. Pursuant to section 607 of the CAA, EPA applies an offset to each HCFC transfer by deducting 0.1 percent from the transferor's allowance balance. The offset benefits the ozone layer since it "results in greater total reductions in the production in each year of * * * class II substances than would occur in that year in the absence of such transactions" (42 U.S.C. 7671f).

The U.S. remained comfortably below the aggregate HCFC cap through 2009. The 2003 Final Rule announced that EPA would allocate allowances for 2010–2014 in a subsequent action and that those allowances would be lower in aggregate than for 2003–2009, consistent with the next stepwise reduction for HCFCs under the Montreal Protocol. EPA stated its intention to determine the number of allowances that would be needed for HCFC–22 and HCFC–142b, bearing in mind that other HCFCs would also contribute to total HCFC consumption. EPA noted that it would likely achieve the 2010 stepwise reduction by applying a percentage reduction to the HCFC–22 and HCFC–142b baselines. EPA subsequently reviewed market conditions to estimate servicing needs and market adjustments in the use of HCFCs, including HCFCs for which EPA did not establish baselines in the 2003 Final Rule.

In the 2009 Final Rule, EPA estimated the need for HCFC–22 during the 2010–2014 regulatory period, and determined the percentage of that need for which it was appropriate to allocate allowances. As described in section IV.B.3. of the proposed rule (77 FR 237), EPA determined that the percentage of the estimated need allocated in the form of allowances should not remain constant from year to year but rather should decline on an annual basis. For 2010, EPA allocated allowances equal to 80 percent of the estimated need for HCFC–22, concluding that reused, recycled, and reclaimed material could meet the remaining 20 percent. Under the 2009 Final Rule, the percentage of estimated need for which there was no allocation, and therefore would need to be met through recycling and reclamation, rose from 20 percent in 2010 to 29 percent in 2014 to ensure the U.S. market would have a viable reclamation industry and could meet the 2015 stepwise reduction under the Montreal Protocol.

As explained in the Background section, EPA is undertaking this rulemaking as a result of the decision issued by the Court in *Arkema* (618 F.3d 1, D.C. Cir. 2010), in which the Court vacated portions of the 2009 Final Rule.

C. What sections of the Clean Air Act apply to this rulemaking?

Several sections of the CAA apply to this rulemaking. Section 605 of the CAA phases out production and consumption and restricts the use of HCFCs in accordance with the schedule set forth in that section. As discussed in the 2009 Final Rule (74 FR 66416), section 606 provides EPA authority to set a more stringent phaseout schedule than the schedule in section 605 based on an EPA determination regarding current scientific information or the availability of substitutes, or to conform to any acceleration under the Montreal Protocol. EPA previously set a more stringent schedule than the section 605 schedule through a rule published December 10, 1993 (58 FR 65018). Through the 2009 Final Rule, EPA accelerated the section 605 schedule to reflect the acceleration under the Montreal Protocol as agreed to under the Montreal Protocol in September 2007. The more stringent schedule established in that rule is unaffected by the 2010 Court decision and is therefore still in effect.

Section 606 provides EPA authority to promulgate regulations that establish a schedule for production and consumption that is more stringent than what is set forth in section 605 if: "(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or (3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title." It is only necessary to meet one of the three criteria. In the 2009 Final Rule, EPA determined that all three criteria had been met with respect to the schedule for phasing out production and consumption of HCFC–22 and HCFC–142b.

As noted in the 2009 Final Rule, while section 606 is sufficient authority for establishing a more stringent schedule than the section 605 phaseout schedule, section 614(b) of the CAA provides that in the case of a conflict between the CAA and the Montreal Protocol, the more stringent provision shall govern. Thus, section 614(b) requires the agency to establish phaseout schedules at least as stringent as the schedules contained in the Montreal Protocol. To meet the 2010 stepdown requirement, EPA is continuing to allocate HCFC allowances at a level that will ensure the aggregate HCFC production and consumption will not exceed 25 percent of the U.S. baselines. For more discussion of this point, see 74 FR 66416.

Finally, section 607 addresses transfers of allowances both between companies and chemicals. EPA is further clarifying the policy and procedures applicable to inter-pollutant transfers in this action, and is making a minor change to the regulations governing inter-pollutant transfers to provide additional clarity to stakeholders.

D. How does this action relate to the 2010 court decision?

Certain allowance holders affected by the 2009 Final Rule filed petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit. Among other arguments, the petitioners, Arkema, Inc., Solvay Fluorides, LLC, and Solvay Solexis, Inc., contended that the rule was impermissibly retroactive because in setting the baselines for the new regulatory period, EPA did not take

into account certain inter-pollutant baseline transfers that petitioners had performed during the prior regulatory period. The 2011 Interim Final Rule contained a description of those transfers and the EPA approvals of those transfers. As explained in the 2011 Interim Final Rule, Solvay Solexis, Inc. submitted two Class II Controlled Substance Transfer Forms for consumption allowance transfers to Solvay Fluorides, LLC on February 15, 2008, and March 4, 2008. Arkema, Inc. submitted two Class II Controlled Substance Transfer Forms for consumption and production allowance transfers on April 18, 2008. Each company requested EPA's approval to convert HCFC–142b allowances to HCFC–22 allowances, and checked a box on the EPA transfer form indicating that "baseline" allowances would be transferred. EPA sent non-objection notices to Solvay Solexis, Inc. and Solvay Fluorides, LLC on February 21, 2008, and March 20, 2008, and to Arkema, Inc. in April 2008. The transfer requests and EPA's non-objection notices were attached to petitioners' court filings and are available in the docket for this action.

In the Notice of Proposed Rulemaking titled "Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export," published in the **Federal Register** at 73 FR 78680 on December 23, 2008 (2008 Proposed Rule), EPA requested comments on establishing baselines for the 2010–2014 regulatory period "with or without" taking into account baseline inter-pollutant transfers made during the 2003–2009 regulatory period (73 FR 78687). The proposed regulatory text accounted for the inter-pollutant transfers discussed above. The increase in HCFC–22 baseline allowances for Arkema, Inc. and Solvay Fluorides, LLC presented in the 2008 Proposed Rule resulted in a larger amount of HCFC–22 baseline allowances overall and therefore a lower percentage of HCFC–22 baselines allocated across the board in each control period. Specifically, the proposed shift resulted in a 16 percent decrease in allocation share for all other HCFC–22 allowance holders, and increases for the petitioners: Arkema and Solvay.

In the 2009 Final Rule, after considering comments, EPA determined that allowing inter-pollutant transfers from one regulatory period to become a part of the baseline in the next regulatory period could undermine the agency's chemical-by-chemical phaseout approach and encourage market manipulation. EPA also concluded that section 607 of the CAA was best read as limiting inter-pollutant transfers to those conducted on an annual basis. For these reasons, EPA did not take the 2008 inter-pollutant transfers into account in establishing the baselines for the 2009 Final Rule covering 2010–2014.

The Court issued a decision on August 27, 2010, agreeing with petitioners that "the [2009] Final Rule unacceptably alters transactions the EPA approved under the 2003 Rule" (*Arkema* v. *EPA*, 618 F.3d at 3). The Court vacated the rule in part, "insofar as it operates retroactively," and remanded to EPA "for prompt resolution," (618 F.3d at 10). The Court withheld the mandate for the decision pending the disposition of any petition for rehearing. On November 12, 2010, EPA filed a petition for rehearing, which was denied on January 21, 2011. The mandate issued on February 4, 2011.

EPA presented its interpretation of the Court's decision with regard to baseline allowances and 2011–2014 calendar-year allowances in the 2011 Interim Final Rule (76 FR 47456). EPA has not changed that interpretation but is repeating it here for ease of reference. Because the Court vacated the rule only in part, and because various parts of the rule are intertwined, EPA relied on its expertise in administering the HCFC phaseout regulations under Title VI of the CAA to determine how to apply the vacatur within the confines of the balance of the rule, which was not vacated. First, EPA noted that the rule contains elements that were not at issue in the litigation. EPA concluded that the vacatur had no effect on allowances for any substances other than HCFC–142b and HCFC–22, since the petitioners' claims and the opinion itself discuss only those two substances. Similarly, EPA concluded that other discrete portions of the rule, such as the provisions on use and introduction into interstate commerce, were unaffected by the vacatur.

The baselines for HCFC–142b and HCFC–22 were clearly at issue in the litigation and indeed are the focus of the Court's opinion. The Court found that "the agency's refusal to account for the Petitioners' baseline transfers of inter-pollutant allowances in the Final Rule is impermissibly retroactive," (618 F.3d at 9). Because baseline and calendar-year allowances are inextricably linked,[5] EPA determined that the Court's vacatur voided the HCFC–22 and HCFC–142b baselines in 40 CFR 82.17 and 82.19 as well as the percentage of baseline allocated for those specific substances in 40 CFR 82.16 for all companies listed in those sections.[6] This meant that in the absence of this rule, production and import of these two substances were prohibited under 40 CFR 82.15. Recognizing this scenario, EPA sent letters in January 2012 and January 2013 to affected stakeholders informing them that the agency would exercise enforcement discretion for a limited period provided their production and import did not exceed specified levels and provided that they adhered to additional conditions.

In determining the meaning of the Court's vacatur, EPA considered whether this interpretation was consistent with what the Court intended and a good fit for the specific circumstances, which include the goals and design of the HCFC allowance program and the basic structure of the 2009 Final Rule. While this interpretation is appropriate in this instance, it is possible that another interpretation would be more appropriate in a case involving a program with different goals, design, or structure.

EPA's initial response to the Court's partial vacatur was to issue the 2011 Interim Final Rule (76 FR 47451). That rule allocated allowances for 2011 only. Through today's notice, EPA is addressing the Court's decision as it relates to the remainder of the regulatory period ending December 31, 2014.

IV. How is EPA allocating HCFC–22 and HCFC–142b allowances for 2012–2014?

EPA is continuing the system established in previous rulemakings (68 FR 2820, 74 FR 66412, 76 FR 47451) for HCFC production and import in the U.S. The process works as follows for each HCFC: First, all the company-specific baselines listed in the tables at 40 CFR 82.17 and 82.19 are added to determine the aggregate amount of baseline production and consumption, respectively. Second, EPA determines how many consumption allowances the market needs for a given year, taking into account sources other than new production and import, and then divides that amount by the aggregate

[5] Baseline and calendar-year allocations are inextricable because calendar-year allocations are expressed as a percentage of baseline, and the percentage of baseline allocated for a specific substance varies depending on the sum of all company baselines for that substance. The process is described in greater detail in section IV.

[6] The companies' allocations are inter-related because, as noted in footnote 5, the percentage of baseline allocated varies according to the sum of the company-specific baselines.

amount of baseline allowances. The resulting percentage is listed in the table at section 82.16 and becomes what each company is allowed to consume in a given control period. For example, a company with 100,000 kg of HCFC–22 baseline consumption allowances would multiply that number by the percentage allowed for the year (for example, 17.7 percent in 2012) to determine its calendar-year consumption allowance is 17,700 kg.

In this rulemaking EPA is (1) establishing 2012–2014 company-by-company consumption and production baselines for HCFC–22 and HCFC–142b in the tables at 40 CFR 82.17 and 82.19 identical to the baselines established in the 2011 Interim Final Rule (76 FR 47468); (2) allocating company-by-company production and consumption allowances for these substances for 2012–2014 by establishing allowed percentages of production and consumption baselines in two tables at section 82.16; and (3) revising the regulatory text at 40 CFR 82.23 to make the procedure for all future inter-pollutant transfers clear. EPA will address the baselines and allocations for the control periods beyond 2014 at a later date. All aspects of the 2009 Final Rule promulgated on December 15, 2009, (74 FR 66412) that are not addressed in this final rule are unchanged.

EPA again notes that beginning January 1, 2015, section 605 of the CAA prohibits the use and introduction into interstate commerce of any HCFC listed as a class II substance unless it "(1) has been used, recovered and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020; or (4) is listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 612(c)." In addition, EPA's regulations at 40 CFR 82.15 restricted use and introduction into interstate commerce of HCFC–141b, HCFC–142b, and HCFC–22 beginning in 2010, with limited exceptions.

A. What baselines is EPA using for HCFC–22 and HCFC–142b allowances?

In the January 4, 2012, notice, EPA proposed to establish 2012–2014 company-by-company consumption and production baselines for HCFC–22 and HCFC–142b that were identical to the baselines established in the 2011 Interim Final Rule (see 40 CFR 82.17 and 82.19). EPA also provided advance notice that it would consider updating baselines for the 2015–2019 regulatory period, especially if there is an environmental benefit to doing so.

1. What baselines is EPA using for 2012–2014?

Four companies commented on how EPA should proceed with establishing baselines for 2012–2014. Arkema and Solvay both support EPA's inclusion of past inter-pollutant transfers of baseline allowances, and believe that the proposed baselines are fully consistent with the *Arkema* decision. On the other hand, DuPont and Honeywell state that *Arkema* does not require EPA to recognize the inter-pollutant baseline transfers beyond 2009, nor does it address the validity of the 2008 transfers. These commenters also state that recognizing these transfers beyond 2009 is contrary to section 607, EPA's transfer regulations, and the agency's interpretation of those regulations for chemicals that are being phased down. In addition, they assert that if EPA does take those transfers into account in establishing baselines for 2012–2014, the agency should only allocate the percentage of the transferred baselines that would be allocated if the baselines had never been converted from HCFC–142b to HCFC–22. They state that recognizing the transfers has the effect of increasing the baseline share of the petitioners in *Arkema* and reducing the share of other companies in violation of their due process rights. Finally, they state that under the *Arkema* decision, their share of the baseline is vested.

EPA cited several reasons why it would prefer to set baselines without taking into account inter-pollutant transfers in the 2009 Final Rule (74 FR 66420), in the Response to Comments document included in the record for that rulemaking and in the 2011 Interim Final Rule (76 FR 47451). These considerations remain important, and are the basis for EPA's policy on future inter-pollutant transfers, which is discussed in section V of this notice. However, EPA must act in accordance with the Court's holding regarding the 2008 transfers. In *Arkema*, the Court concluded that EPA's non-objection notices for the 2008 transfers created "vested rights" in the transferred baselines, which EPA must reflect in rules governing the current regulatory period, at least to the extent such rules continue to use the historical production and consumption baselines. The Court explicitly held that "the Agency's refusal to account for the Petitioners' baseline transfers of interpollutant allowances in the Final Rule is impermissibly retroactive," (*Arkema*, 618 F.3d at 24). Given the *Arkema* decision, and given the recent decision in *Honeywell International, Inc.* v. *EPA, DC Cir. No. 10–1347 (January 22, 2013) ("Honeywell")*, EPA is recognizing the 2008 transfers in establishing the baselines through 2014. Thus, the baselines finalized for 2012–2014 in today's rule are identical to the HCFC–22 and HCFC–142b baselines established in the 2011 Interim Final Rule.

The commenters assert that the *Arkema* decision did not determine the validity of the transfers. They further assert that EPA lacked authority to approve permanent inter-pollutant baseline transfers, that the 2008 transfers as characterized by the Court are thus invalid, and that EPA should not recognize them in setting baselines. The validity of the 2008 transfer approvals was challenged in *Honeywell*. The brief filed by the agency on January 30, 2012, provides further response to several of the arguments that Honeywell and DuPont make in their comments on the proposed rule and is included in the docket for this rulemaking.

The commenters do not assert that EPA lacked authority to approve inter-pollutant transfers whose effects were limited to the regulatory period ending in 2009. Rather, they assert that EPA lacked authority to approve inter-pollutant transfers with effects lasting beyond 2009. They state that *Arkema* did not determine the validity of such transfers. Yet the *Arkema* Court found contrary to the Agency's position, that EPA had "approved permanent changes to the baseline as a result of inter-pollutant transfers" and that the Agency could not "undo these completed transactions," (*Arkema*, 618 F.3d at 23). It is not plausible that the Court would have reached this holding if it viewed EPA's authority to approve inter-pollutant transfers with effects beyond the immediate regulatory period as open to debate. As the Court stated in *Honeywell*, "the *Arkema* Court necessarily concluded that permanent inter-pollutant transfers were permissible under the statute" (slip op. at 7). The *Honeywell* Court noted that it was bound by *Arkema* and denied commenters' petition for review of the 2008 transfers. The *Honeywell* decision is available in the docket for this action.

Contrary to the commenters' assertions, section 607 of the CAA is ambiguous with regard to whether inter-pollutant transfers may have permanent effects that carry forward to subsequent regulatory periods. EPA has discretion under section 607 to determine how to treat such transfers. While EPA did not intend its non-objection notices to confer permanence to the 2008 inter-pollutant transfers, EPA disagrees with

commenters' implication that under section 607, the agency could not have done so. That would be true only if section 607 expressly prohibited permanent inter-pollutant transfers, which it does not. As discussed in more detail in section V.A. of this preamble, for policy reasons EPA will approve only annual inter-pollutant transfers in the future. EPA also believes that while section 607 is not clear on its face, it is best interpreted as precluding permanent inter-pollutant transfers, as explained in section V.A. of this preamble. As noted by the Court in *Arkema*, interpreting section 607 to preclude permanent inter-pollutant transfers "may more accurately track the statutory mandate," (*Arkema*, 618 F.3d at 22).

Commenters assert that EPA has departed from its own regulations in proposing to recognize the 2008 inter-pollutant transfers in the baselines for 2012–2014. Commenters ignore, however, the Court's interpretation of those regulations. EPA's intent in the 2003 Rule, which established the transfer provisions, was to preclude permanent inter-pollutant transfers of baseline allowances (see 68 FR 2835). EPA notes that until the rulemaking that resulted in the 2009 Final Rule, the agency did not specifically develop a policy on whether inter-pollutant transfers could ever carry forward to a new regulatory period following one of the intermediate phasedown steps. Nonetheless, the *Arkema* decision found that the agency's conclusion in the 2009 Final Rule not to carry inter-pollutant transfers forward to a new regulatory period "departed from the policy it had adopted in the 2003 Rule," (*Arkema*, 618 F.3d at 6). EPA cannot disregard the Court's holding on the ground that the 2003 Rule prohibited permanent inter-pollutant transfers where the Court has found otherwise.

The commenters are also incorrect that EPA previously interpreted its regulations as creating a "phasedown follows the allowance" principle. Commenters assert that under this principle, EPA should only allocate the percentage of the transferred baselines allocated for HCFC–142b. However, EPA has never adopted such a principle. Preamble statements leading up to and accompanying the 2003 Rule refer to the elimination of HCFC–141b baseline upon the chemical's complete phaseout, "regardless of what inter-pollutant transfers had taken place," (68 FR 2835). That is a different matter from a partial phasedown, like the phasedown of HCFC–22 and HCFC–142b in 2010. Additionally, the commenters' approach runs counter to the way EPA allocates allowances as described in section IV of this preamble.

Finally, the commenters assert that EPA has violated their due process rights by decreasing their market share, which they argue is a vested right under *Arkema*. From a substantive perspective, what they assert is a vested right (i.e., a specific share of allowances) is not in fact a vested right, nor is it protected under the due process clause. The Court held that EPA's actions in approving the 2008 transfers created vested rights in the transferred baselines. The Court placed particular emphasis on the fact that the Agency took affirmative actions that appeared to ratify the transfers: "The Agency's approval and acknowledgement of Petitioners' actions distinguishes this case from situations where a company's unilateral business expectations are thwarted by a change in the regulatory framework," (*Arkema*, 618 F.3d at 20). The Court did not examine the issue of whether companies possessed vested rights in baseline or calendar-year allowances generally, or in a specific share of allowances. Nor did the Court hold that the transferred baselines, baseline allowances generally, or calendar-year allowances, are property rights protected under the Due Process Clause. Furthermore, it did not state that companies had any right to a specific number of production or consumption allowances. On the contrary, the Court noted that "the 2010 stepdown gave the EPA occasion to adjust its distribution of allowances," (*Arkema*, 618 F.3d at 25).

EPA's regulatory definitions specify that production and consumption allowances are privileges, not rights (*see* 40 CFR 82.3). As discussed in Section II, the U.S. is in the process of phasing out production and consumption of HCFCs, culminating in a complete phaseout in 2030. EPA's regulations prohibit production and consumption of HCFCs without allowances (40 CFR 82.16(a), (b)). In the absence of this final rule, no allowances would exist for 2012 or beyond. In this regulatory environment, no company has an entitlement to a specific number or share of HCFC allowances.

In addition, under this final rule, commenters are receiving the same number of baseline allowances they received under previous HCFC allocation rules. Recognition of the 2008 transfers in the aggregate HCFC–22 consumption baseline does not require EPA to extract baseline allowances from other companies.

From a procedural perspective, commenters were given multiple opportunities to comment on or challenge the effects of the 2008 transfers at issue in *Arkema* on baselines for the current regulatory period. As noted in *Honeywell*, they had "notice and an opportunity to present [their] views during EPA's pre-*Arkema* regulatory proceedings, during the *Arkema* litigation, and during EPA's subsequent post-*Arkema* proceedings" (slip op. at 7). They commented on the 2009 Final Rule, the 2011 Interim Final Rule and the proposal for this final rule. They also had the opportunity to intervene in the *Arkema* lawsuit and the opportunity to challenge the 2011 Interim Final Rule, in which EPA actually reflected the 2008 transfers in establishing baselines. A more detailed summary of the comments on this issue, as well as the Agency's response to issues not addressed in the preamble or the briefs, is included in the Response to Comments, found in the docket for this rulemaking.

2. What baselines is EPA considering for 2015–2019?

Looking ahead to the next regulatory period, the agency received four comments on whether it should use more recent production and import data in establishing baselines for 2015–2019. Two commenters recommend using data from 2005–2007 because these years were used to establish baselines in the 2009 Final Rule for newly-controlled HCFCs (74 FR 66412). In addition, using the highest production and import levels from 2005–2007 would reflect current and stable market conditions. One commenter points out that production and consumption in 2008 and 2009 were likely affected by the economic downturn, while 2010 and 2011 fall under the stepdown established by the 2009 Final Rule. Another commenter believes that updating baselines would avoid rewarding companies for attempting to manipulate their baselines by converting allowances from HCFCs with lower future market value (i.e., HCFC–142b) to HCFC allowances they knew would retain value in the next regulatory period (i.e., HCFC–22).

Two other commenters do not support revised baselines. One of the commenters believes that the current allocation method is the fairest method because it is transparent and well understood by all market participants. The other commenter sees no benefit to updating baselines, but says future reductions in allocations will benefit the environment by promoting reclamation.

Since EPA did not propose to establish baselines for 2015–2019, the agency will continue to assess the merits of using a more recent set of

years to establish baselines in a later rulemaking. The agency is still receptive to the idea of updating baselines in 2015, but notes that it did not receive any evidence that there is an environmental benefit to doing so.

B. What factors did EPA consider in determining allocation amounts for HCFC–22 and HCFC–142b?

In the 2009 Final Rule, EPA decided to allocate HCFC–22 and HCFC–142b allowances based on the projected servicing needs for those substances, taking into account the portion of need that can be met through recycling and reclamation. EPA is not changing that general approach, and continues to believe it is necessary in order to promote the use of used, recycled, and reclaimed material in anticipation of the 2015 phasedown step. In accordance with the Court's decision in *Arkema*, the agency proposed, and is now finalizing, baselines that reflect 2008 inter-pollutant baseline transfers. This approach necessitates issuing a different percentage of company baselines in order for the aggregate number of calendar-year HCFC–22 consumption allowances to be less than or equal to the 2009 Final Rule. In fact, EPA proposed to allocate significantly fewer consumption allowances for HCFC–22 relative to the 2009 Final Rule based on an analysis of updated market conditions.

Specifically, the agency considered to what extent servicing need can be met by (1) significant inventories of existing HCFC–22, (2) increased reclamation capacity, and (3) re-use of HCFC–22 within supermarkets. See "Analysis of HCFC–22 Servicing Needs in the U.S. Air Conditioning and Refrigeration Sector: Additional Considerations for Estimating Virgin Demand" (Adjustment Memo), included in the docket to this rulemaking. In the Adjustment Memo, EPA considers a higher and a lower HCFC–22 allocation scenario for each year. In the larger allocation scenario: (1) Surplus inventory from past years (hereinafter called "existing inventory") meets 6,000 MT of estimated need each year; (2) recovery and reclamation meet 12,500 MT of need, the same amount as in the 2009 Final Rule; and (3) 20 percent of total need in the large retail food sector is met by in-house recovery and reuse. In the smaller allocation scenario: (1) Existing inventory also meets 6,000 MT of estimated need each year; (2) recovery and reclamation meet 19,700 MT of estimated servicing need; and (3) 70 percent of total need in the large retail food sector is met by in-house recovery and reuse.

As shown in Table 4 of the Adjustment Memo, the agency proposed to issue HCFC–22 consumption allowances as follows: (1) Between 25,100 and 36,200 MT in 2012 (a decrease of 11 to 38 percent relative to the 2009 Final Rule); (2) between 20,800 and 31,400 MT in 2013 (a decrease of 13 to 42 percent); and (3) between 16,400 and 26,300 MT in 2014 (a decrease of 15 to 47 percent). These proposed amounts correspond to allocations of 17.7 to 25.5 percent of baseline in 2012, 14.7 to 22.1 percent in 2013, and 11.6 to 18.5 percent in 2014. The agency took comment on its analysis of market conditions, which specifically looked at existing inventory, reclamation capacity, and HCFC–22 reuse in the supermarket industry. EPA also asked for comment on potential difficulties faced by small businesses and on whether or not the installation of dry-shipped HCFC–22 condensing units affects the phaseout.

Between the 2011 Interim Final Rule and the proposed rule, the agency received a total of 50 comments (some with multiple signatories) on the market conditions (see section 2 of the Response to Comments) considered in allocating HCFC–22 and HCFC–142b allowances. As discussed in the proposed rule, the need for HCFC–22 to service existing equipment is the primary factor affecting EPA's overall allocation of production and consumption allowances for the current regulatory period. Thus, the Adjustment Memo only discusses HCFC–22 and most comments, as well as the agency's response, focus primarily on HCFC–22.

Additionally, EPA received 13 comments, four from the Interim Final Rule and nine from the proposed rule, on whether or not to provide more HCFC–22 and/or HCFC–142b consumption and/or production allowances as compensation for lost opportunities during 2010 ("recoupment"). Lastly, the agency proposed to allocate different annual percentages of baseline for consumption than for production ("decoupling"). Without decoupling the baselines, the percentage of baseline allocated for production would be the same as that for consumption for a given HCFC. Nine comments specifically addressed decoupling of baseline percentages.

1. How is EPA adjusting estimated servicing need to account for surplus inventory from past years?

The agency proposed to account for existing inventory of HCFC–22 produced in previous years by making downward adjustments to the consumption allocation of 6,000 MT each year. EPA's analysis indicated the amount of existing inventory was between 22,700 MT and 45,400 MT. Including relevant comments received on the 2011 Interim Final Rule, EPA received eight comments on its assessment of existing inventory of HCFC–22. Seven comments state there are significant volumes of HCFC–22 in existing inventory and that accounting for this inventory is essential for supporting recovery and reclamation. One of those commenters indicates the 6,000 MT proposed annual adjustment and the 45,400 MT stockpile estimate should be considered a minimum, not maximum amount. Another also supports EPA's consideration of existing inventory, and believes the estimates used in the proposed rule may be too low based on their own inventory and their own estimates of industry-wide inventory.

All comments on EPA's analysis, including confidential comments, indicate EPA's estimate of existing inventory is reasonable and that an annual adjustment to the estimated servicing need of 6,000 MT is supportable. EPA considered a wide range of existing inventory (between 22,700 MT and 45,500 MT), but comments support the proposed 6,000 MT adjustment regardless of the total stock of existing inventory. Based on the information provided, the agency does not believe the annual adjustment or the estimate of existing inventory should be increased. Overestimating the amount in inventory could limit the ability of consumers to service their equipment, resulting in systems being prematurely decommissioned. EPA provides a full summary of comments and agency responses in the Response to Comments, but notes here that all commenters who addressed the proposed 6,000 MT adjustment specifically were in support of an adjustment at least that large. EPA is finalizing the consumption allocation with the proposed adjustment for existing inventory.

2. How is EPA adjusting allowances to encourage recovery, reclamation and reuse?

In the 2009 Final Rule, the agency recognized that servicing needs can be met with a combination of newly-manufactured or imported HCFCs (virgin HCFCs) and HCFCs that have been recovered and either reused, recycled, or reclaimed. The *2009 Servicing Tail Report* analyzed various reclamation scenarios, and after several rounds of industry feedback, the agency decided to issue allowances 12,500 MT below estimated need in 2010–2014. For 2010, 12,500 MT was 20 percent of the

estimated need. EPA continues to believe that reused, recycled, and reclaimed material can help meet HCFC–22 servicing needs. The agency published new projections of reclaim capabilities in the Adjustment Memo, and took comment on those projections via this rulemaking.

Out of the 15 comments EPA received on reclaim capabilities, 14 comments (some signed by multiple organizations) supported EPA's analysis that the reclamation industry has the capacity to reclaim more than 19,700 MT per year. One comment stated that the infrastructure to effectively and efficiently recover, recycle, redistribute, and reuse HCFC–22 likely will take several years to develop. In addition, one company agreed that the industry has the capacity to meet reclaim needs, but disagreed with the base assumption that this activity will automatically take place.

In the Adjustment Memo, EPA considered annual reclamation levels of 12,500 MT and 19,700 MT. Several organizations state that the 19,700 MT figure should be a minimum, rather than a maximum, because established companies that reclaim refrigerants have the technical capacity to recover 19,700 MT or more in 2012 alone and could easily expand capacity to meet additional need. One company comments that reclamation companies will be able to expand to cover the need that will ultimately be driven by higher prices and a decrease in supply. However, companies will not expand until there is a need. Another company also states that it could easily triple its current capacity, and believes the same is true for many reclamation companies. Many companies support an allowance reduction to encourage an increase in reclamation capacity and volume. These commenters, including 20 EPA-certified reclaimers that submitted a single comment, all believe that the capacity exists to handle increased reclamation volumes.

Several commenters believe sufficient recovery and reclamation capacity exists, but that the supply chain of used refrigerant from equipment-in-use to reclamation facilities is fragmented and complex. The concern is not whether capacity exists, or whether reclaimers could quickly expand capacity, but whether material is actually being recovered and brought to reclaimers. A group of recovery companies believes that existing reclaimers have the capacity to process more than enough HCFC–22 to meet the industry needs, but are not convinced that given the present situation, there will be enough refrigerant recovered to meet the raw material needs of the reclaimers. However, a group of recovery companies that focuses exclusively in recovering used refrigerant from retiring equipment does believe reducing allowances will change the incentives for recovery. Finally, one company believes that EPA's estimate of the potential for recovery and reuse is too optimistic during 2012–2014, particularly because residential air conditioners use only small quantities of the gas.

EPA's assessment that the reclamation industry has the capacity to reclaim 19,700 MT of HCFC–22 per year, as presented in the Adjustment Memo, is supported by most of the comments received. The amount of used refrigerant that can be recovered from retiring equipment is sufficient to allow for the reclamation of 19,700 MT per year, based on expected recovery rates used in the Vintaging Model.[7] Included in the docket for this rulemaking is a new supporting memo titled "Recovered HCFC–22 Available to Meet Servicing Needs" (Recovery Memo). In this memo EPA shows the amount of HCFC–22 that can be recovered from HCFC–22 equipment that reaches its end of life under two scenarios. In the first scenario, EPA uses the end-of-life assumptions in the Vintaging Model to determine how much HCFC–22 is recovered from retiring equipment. The Vintaging Model uses a 35 percent recovery rate in retiring residential air conditioning systems. The Recovery Memo details all the recovery assumptions used, which are nearly identical to those used in the *2009 Servicing Tail Report*. These numbers are similar to those presented in table 4–5, "Scenario 50: 50% Recovery Rate," which was also presented in the *2009 Servicing Tail Report*. In the second scenario, EPA assumes all HCFC–22 is recovered at the end-of-life. The intent of this memo is to show that it is technically feasible to recover and reclaim 19,700 MT of HCFC–22 per year between 2012–2014, even when only 35 percent of the HCFC–22 is recovered from residential air conditioning systems—the largest use for HCFC–22.

However, EPA agrees with some commenters that the amount of refrigerant that is available to be recovered does not necessarily equal the amount that is recovered in practice, and that it will take time for recovery practices to change. The agency recognizes that assuming 19,700 MT of annual servicing need can be met by recovered and reclaimed material—instead of 12,500 MT—does not mean that amount will actually be reclaimed each year. EPA's adjustment to encourage recovery and reclamation could also encourage transition to HCFC–22 alternatives and more recovery and reuse of HCFC–22 in systems that require a large refrigerant charge. Although both of these outcomes are difficult to measure and predict, EPA expects that these outcomes will sufficiently deal with any gap between the adjustment in allocation and realized reclamation levels. EPA adopted the same general approach in the 2009 Final Rule (using 12,500 MT instead of 19,700 MT) to foster recovery and reclamation. In addition, EPA has received anecdotal information from stakeholders that reclaimers are already offering increased incentives to return recovered refrigerant and that this will continue as long as there is an economic incentive to do so. As the supply of virgin refrigerant shrinks, the incentive to recover and reclaim used refrigerant will likely increase. EPA provides a full summary of comments and agency response in the Response to Comments.

EPA does not believe any of the concerns raised should preclude the agency from increasing the adjustment for reclamation from 12,500 MT to 19,700 MT to foster reclamation, especially in light of the 2015 Montreal Protocol cap and the 2020 phaseout of HCFC–22 production and import. EPA believes increased recovery and reclamation is necessary to ensure a smooth transition between now and 2020 and is increasing the difference (relative to the 2009 Final Rule) between estimated servicing need and the allocation for virgin production and import. The agency is finalizing the proposed 19,700 MT adjustment to

[7] The Vintaging Model is the primary tool that EPA uses to estimate projected HCFC consumption. The Vintaging Model estimates the annual chemical emissions from industry sectors that have historically used ODS, including air conditioning, refrigeration, foams, solvents, aerosols, and fire protection. Within these industry sectors, there are over fifty independently-modeled end uses. The model uses information on the market size and growth for each of the end uses, as well as a history and projections of the market transition from ODS to alternatives. As ODS are phased out, a percentage of the market share originally filled by the ODS is allocated to each of its substitutes. The model tracks emissions of annual "vintages" of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment. EPA's Vintaging Model uses this market information to build an annual inventory of in-use stocks of equipment and the ODS refrigerant and non-ODS substitutes in each of the end uses. This information is used to project the servicing needs of ODS-containing equipment. Additional information on the Vintaging Model is available in the *2009 Servicing Tail Report*, which can be found in the docket for this rulemaking.

foster increased HCFC–22 recovery and reclamation.

3. How is EPA accounting for recovery and reuse of HCFC–22 in the supermarket industry?

In the proposed rule, EPA considered adjusting the allocation for virgin HCFC–22 production and import to account for current recovery and reuse practices in the supermarket industry. Specifically, the agency estimated that between 20 percent and 70 percent of annual servicing need in the large retail food sector could be met by HCFC–22 recovered and reused in-house. In addition to the analysis conducted to develop the Adjustment Memo, EPA considered late comments that addressed recovery and reuse of HCFC–22 in supermarkets. The comments, combined with EPA's findings presented in the Adjustment Memo, indicate that supermarkets deal with recovered refrigerant in a variety of ways. Some appear to meet 10–20 percent of their annual servicing need with material they recovered from internal existing prior uses. Others have the material reclaimed and do not reuse or bank any of the material. A third group meets 80 to 100 percent of their annual need with reused material.

EPA received an additional comment on reuse by large end users, but not specifically supermarkets. The commenter notes that large users retiring equipment can efficiently and effectively capture the majority of refrigerant from commercial refrigeration and air conditioning units. These users can recover refrigerant for future servicing of other equipment they own. These users do not require reclamation technology or equipment, and can recover and reuse significant volumes of refrigerant. Such recovery and reuse should continue to be considered as a source of HCFC–22 service refrigerant.

EPA agrees that large end users, including supermarkets and other large commercial applications, can be a source for recovered HCFC–22. However, the agency only received information on how six companies reuse refrigerant in-house, and their reuse percentages are very different. Since the agency does not have sufficient data on in-house reuse, EPA is not accounting for supermarket reuse as its own category. However, the agency's Vintaging Model has reasonable estimates for actual recoverable material for various sectors, and EPA is using those modeled recovery rates for supermarkets to help support overall recovery and reuse estimates in this rule (see the Recovery Memo for specifics on modeled recovery rates).

4. Did EPA consider providing allowances to small businesses in this final action?

In response to the 2011 Interim Final Rule, one small business informed EPA that it could not acquire either HCFC allowances or the HCFCs it needs to manufacture its HCFC blend (see the letters from ICOR dated May 17, 2011 and September 6, 2011, available in the docket for this action). To remedy this situation, the commenter requested that EPA provide unused allowances to companies that purchased either HCFCs or HCFC consumption allowances in 2008 and 2009. In the proposed rule, EPA noted that the inability to acquire allowances and/or HCFCs themselves does not appear to be a widespread problem, as numerous companies have made a significant number of transfers over the last year alone, and no other company has commented that it cannot acquire HCFCs. However, EPA took comment on whether other companies were having difficulty acquiring HCFCs or HCFC allowances. In the proposed rule, the agency also provided some historical background on how EPA provided flexibility for small businesses when establishing the HCFC allocation system.

EPA received four comments on providing allowances to manufactures of HCFC blends, all of which were in opposition. Two companies point to the flexibility for companies without baselines to obtain HCFCs or HCFC allowances by purchasing them from others. Another commenter notes that EPA provided for new entrants when it established the allocation system in 2003.

Since EPA did not receive any additional comments in support of providing HCFC allowances to manufacturers of HCFC blends, and because the agency has previously stated its belief that the current allocation system provides significant flexibility for new entrants (as documented in the revised Flexibility Memo), EPA is not providing allowances for new entrants at this time.

EPA also sought comment on the concept of providing HCFC–22 allowances to reclaimers, but expressed reservations. EPA received eight comments on this topic: four in opposition and four in support. Comments in opposition state that providing allowances to reclaimers could encourage blending of refrigerant, instead of reclaiming refrigerant. They also cite administrative hurdles in establishing allowances for reclaimers and their skepticism that reclaimers would actually use the allowances to reclaim more material. All three commenters state that the proposed reduction in allowed production and import will encourage recovery and reclamation (without providing allowances).

One comment in support encouraged EPA to provide allowances to reclaimers as a reward for reclamation activities. The commenter also stated that manufacturers create a difficult working environment for reclaimers, claiming, for example:

- The manufacturers exert pressure on wholesalers and contractors not to return their used refrigerants to a reclaimer, using their supply of virgin refrigerants as leverage.
- The manufacturers have asked cylinder manufacturers not to sell pre-labeled DOT 39 cylinders for their blends to reclaimers.
- The manufacturers or their agents will buy an account back by offering a higher price for the used refrigerants than justified.

The commenter argues that the desire of manufacturers to promote their own best self-interest results in a difficult environment for a refrigerant reclaimer to prosper.

EPA continues to have serious concerns about providing allowances to reclaimers that did not historically produce or import HCFC–22 and have not already acquired HCFC–22 allowances. As stated in the proposed rule, the agency's primary concern is that providing allowances for reclaimers could foster unsustainable reclamation practices that rely on blending, instead of investment in the technology to fully reclaim HCFCs. Reclamation through separation and distillation will be more important in 2015 when the HCFC–22 allocation must drop by at least 45 percent from 2010 levels, and it will be absolutely necessary by 2020, at which time production and import of HCFC–22 must be phased out entirely. In addition, many businesses have either found a way to secure reliable access to virgin HCFCs or have made investments to reclaim HCFCs in a sustainable way, without a direct allocation of allowances.

EPA continues to believe that allocating fewer allowances—rather than providing allowances to reclaimers—is the best way to foster reclamation and recovery. In this final rule, EPA is taking significant steps to encourage recovery and reclamation by providing fewer HCFC–22 consumption allowances. Fewer allowances for new production and import increases the

value of existing HCFCs, which in turn increases the incentives for recovery and reclamation. While the agency appreciates the concerns raised by reclaimers about the difficulties they encounter in the refrigerant reclamation business, these barriers have not stopped companies from becoming EPA-certified reclaimers—currently there are more than 50. Given the considerations above, the agency is not providing allowances to reclaimers at this time.

5. Does the installation of dry-shipped HCFC–22 equipment affect the phaseout of HCFC–22?

In the proposed rule, EPA took comment on whether allowing repairs using HCFC–22 dry-shipped condensing units affects the phaseout of HCFC–22. Eight commenters believe the repairs of existing equipment that involve installation of dry-shipped HCFC–22 condensing units is affecting the phaseout and/or should be stopped. They claim that continued installation of dry-shipped condensing units effectively allows the manufacture of otherwise banned HCFC–22 air-conditioning systems, increasing demand for HCFC–22 and undercutting the market for alternative refrigerants. One company does not believe dry-shipped condensing unit repairs can be properly addressed through a reduction in HCFC–22 allocation levels. Cost associated with the HCFC–22 refrigerant needed for the re-charging of the HCFC–22 system is quite small (<5% of the total servicing cost), so even a significant inflation of the cost of HCFC–22 will still have a minimal impact on the end-user's decision. Two commenters ask EPA to ban repairs using HCFC–22 dry-shipped condensing units, one explicitly asking for this action in lieu of further reducing HCFC–22 production. Another commenter is concerned about the negative effects of dry-shipped condensing units on equipment efficiency.

One joint comment from several environmental groups indicated that the market for dry-shipped HCFC–22 units is expanding rapidly; however, no data were provided. The commenters express concern that because newly-produced HCFC–22 is so cheap, service technicians are venting HCFC–22 from broken units, installing dry-shipped units in their place, and then charging the unit with virgin HCFC–22.

EPA received seven comments saying installation of dry-shipped condensing units does not significantly affect the phaseout and/or that dry-shipped HCFC–22 condensing unit repairs should not be banned. These commenters believe dry-shipped condensing units are providing consumers a legal, affordable repair option, and thus not actually increasing demand for HCFC–22 or displacing the sale of new systems. They contend that the primary application of the uncharged HCFC–22 replacement condensing units is as a service option to major compressor and coil failures. While two of the equipment manufacturers who do not support a ban on dry-shipped unit repairs also do not support reduced allocations of HCFC–22, another equipment manufacturer believes that addressing the availability of the refrigerant is the appropriate driver for phasing out virgin HCFC–22, and that the installation of dry-shipped HCFC–22 condensing units does not have a negative effect on the phaseout. Another commenter suggests that if EPA has verifiable evidence that the servicing or repair of HCFC–22 appliances is resulting in increased emissions of the refrigerant, then EPA should consider extending the leak repair requirements to all appliances, not just appliances with a refrigerant charge greater than 50 lbs.

Five additional comments discuss HCFC–22 condensing units in more general terms. One organization suggests that EPA consider that most dry-shipped condensing units are being sold and installed with multi-year warranties, which may require a revision to EPA's servicing tail analyses if HCFC–22 replacement refrigerants are not approved by the compressor and equipment manufacturers for warranty servicing beyond 2015. Two other commenters state that the installation of HCFC–22 condensing units affects the need for HCFC–22. One commenter states that contractors prefer selling new R–410a systems instead of repairing older systems, since it is much more profitable, but that American consumers are struggling to pay bills. One commenter states that further reductions in consumption allowances might discourage installation and field charging of new condensing units with HCFC–22. The commenter also states that continued installation of such units will only increase the challenge of meeting the 2015 stepdown and in turn increase emissions of HCFC–22 to the atmosphere.

The issue of whether repairs involving the installation of dry-shipped HCFC–22 condensing units "affects the phaseout" can be broken into several questions. First, do repairs involving installation of dry-shipped HCFC–22 condensing units increase demand for HCFC–22? Second, do such repairs slow transition from HCFC–22 equipment to equipment using non-ODS alternatives? And finally, does this practice affect EPA's ability to stop the production and importation of virgin HCFC–22 by January 1, 2020?

Based on comments, there is no industry consensus on each of these questions. Specific responses to each comment are included in the Response to Comments found in the docket for this rulemaking. However, given the paucity of concrete quantifiable information on this subject currently available to the Agency, EPA is not ready to determine whether the installation of dry-shipped HCFC–22 condensing units will affect EPA's ability to phase out HCFC–22 by 2020. The limited data received to date suggest that it will not. EPA did not propose to ban dry-shipped condensing units in the proposal and is not taking such action in this final rule. For purposes of future rulemakings, EPA is still interested in quantifiable information on the number of dry-shipped condensing units being shipped, whether they are being used as a repair in lieu of a compressor or motor replacement, and whether and to what extent condensing unit replacements extend the life of an existing system. EPA will continue to evaluate the issue as it develops future regulations.

6. How is EPA addressing the court's decision with regard to 2010 HCFC allowances?

As noted in the proposed rule, EPA interprets the *Arkema* decision as applying, at a minimum, to the baseline and calendar-year allowances for 2011–2014. The agency took comment on whether to interpret the decision as applying to the 2010 allocation, and if so, how allowances in future control periods might be adjusted to reflect this. EPA also took comment on (1) whether it should provide recoupment allowances for HCFC–22 and HCFC–142b, or just HCFC–22 allowances, and (2) whether it should provide recoupment for production and consumption, or just consumption allowances. In this final action, EPA concludes that it has an obligation to consider 2010 allowances in responding to the Court's remand and that recoupment for both HCFC–22 and HCFC–142b production and consumption allowances is an appropriate response to the Court's holding that the agency committed legal error in deciding not to carry the 2008 transfers forward when it established the baselines for the current regulatory period.

EPA received 13 comments in opposition to recoupment. Four comments specifically state that it is too

late to address 2010 allowances, since the Court's mandate did not issue until 2011, and allowances are only good for the calendar year in which they are issued. Two comments assert that providing recoupment allowances would allow for banking or transferring of allowances to later years, which is at odds with the CAA and EPA regulations. Most of these comments point out that some allowances conferred in 2010 actually went unused in that year, and that EPA's current proposal to reduce allowances in 2012–2014 is further rationale for not providing additional allowances to compensate for any perceived lost opportunity in 2010. They point to EPA's statement in the proposal that not providing recoupment would have advantages for the environment, public health, and the goal of encouraging reclamation. They assert that there was an oversupply of HCFC–22 allowances in 2010, that Arkema and Solvay were not harmed in 2010, and that recoupment allowances would constitute a windfall. They refer to the Court's denial of Arkema's and Solvay's motions for a stay of the 2009 Final Rule as evidence that these companies were not harmed. One commenter also asserts that if Arkema and Solvay believe they are entitled to compensation, they must file a claim for compensation under the Tucker Act, 28 U.S.C. 1491. Finally, four comments cite that providing recoupment distorts market share, in contradiction to past EPA policy and the *Arkema* decision as it relates to vested rights.

On the other hand, the two companies that would benefit most from recoupment, Solvay and Arkema, state that EPA should provide recoupment and that the agency must do so in order to comply with the Court's decision in *Arkema*. Solvay states that EPA deprived it of its rightful allowances by failing to recognize its permanent inter-pollutant trades in the 2009 Final Rule and that recoupment is necessary to remedy that error. Arkema asserts that its losses were significant because of its inability to compete effectively in the after-market, stockpile material for sale in later years, and sell other refrigerants to one-stop shoppers.

The primary rationale the commenters present in favor of providing recoupment is that when an agency "* * * commits legal error, the proper remedy is one that puts the parties in the position they would have been in had errors not been made," (*AT&T Corp.* v. *FCC*, 448 F.3d 426, 433 (D.C. Cir. 2006) (*quoting Exxon Co.* v. *FERC*, 182 F.3d 30, 48 (D.C. Cir. 1999)). The Court has further held that the proper remedy to an error is "to put the victim of the agency 'error in the economic position it would have occupied but for the error,'" (Ethyl Corp. v. Browner, 67 F.3d 941, 945 (D.C. Cir. 1995) (*quoting Delta Data Sys. Corp.* v. *Webster*, 744 F.2d 197, 206–07 (D.C. Cir. 1984)).

Arkema contends that providing recoupment for losses would not require improper retroactive action. It states that because there is a strong equitable presumption in favor of retroactivity that would make the injured party whole, EPA can make a correction that goes back to the time the agency error occurred (*Exxon Co.* v. *FERC*, 182 F.3d 30, 48 (D.C. Cir. 1999)). In addition, the commenter argues that in this circumstance EPA may go beyond its otherwise applicable statutory authority. The commenter states that each agency has "general discretionary authority to correct its legal errors," which extends to imposing retroactive changes, even when the statute does not expressly and affirmatively authorize the agency to do so in the first instance (*Natural Gas Clearinghouse* v. *FERC*, 965 F.2d 1066, 1073 (D.C. Cir. 1992)).

As expressed in the proposed rule, EPA's preferred approach to the 2010 allocation was not to provide recoupment. However, EPA reviewed comments and considered the policy and legal aspects of providing or not providing recoupment. In particular, EPA considered the following questions: (1) Does EPA have the obligation to address 2010 allowances in light of the Court's decision in *Arkema*, and (2) does EPA have the ability to provide some form of compensation that would remedy the retroactive aspects of the 2009 Final Rule with respect to 2010? EPA believes that the answer to both questions is "yes."

First, EPA believes it has an obligation to address 2010 allowances in light of the Court's decision in *Arkema*, to the extent feasible given the design and structure of this program. The Court stated that the 2009 Final Rule was, in part, "impermissibly retroactive" because "it attempted to undo the Petitioners' inter-pollutant baseline transfers" based on what the Court saw as a "new interpretation of section 607" of the Clean Air Act. The Court vacated the rule "insofar as it operates retroactively" and remanded the case "for prompt resolution," (*Arkema*, 618 F.3d. at 25). EPA believes that on remand, it must put allowance holders in the position they would have occupied had the agency reflected the Petitioners' inter-pollutant baseline transfers in the 2009 Final Rule (*AT&T* v. *FCC*, 448 F.3d 426 (D.C. Cir. 2006); *Exxon Co.* v. *FERC*, 182 F.3d 30 (D.C. Cir. 1999)). As noted in the proposal, it is appropriate for EPA to consider the 2010 allocation on remand whether or not the Court's decision had the effect of vacating the 2010 allowances. The Court clearly held that the baselines used in the 2009 Final Rule were invalid, and the 2010 allocation relied on those baselines.

Second, EPA believes it is feasible to provide compensation for lost 2010 allowances in the form of recoupment allowances, even though the 2010 period has ended and all 2010 allowances have expired. As explained in the proposed rule, EPA allocates HCFC production and consumption allowances for specific calendar years: They are valid for that year only. Such allowances cannot be banked or borrowed. Therefore, EPA cannot provide meaningful compensation by issuing additional 2010 allowances since they would be void upon issuance. In the narrow circumstance of responding to the Court's decision, however, EPA finds it appropriate to issue a corresponding number of allowances in later years to make up for the 2010 allowances that companies would have received if EPA had reflected the Petitioners' inter-pollutant baseline transfers in the 2009 Final Rule. These recoupment allowances are designed to compensate for lost opportunities to produce or import HCFCs during 2010 for sale in either 2010 or a later year.

In responding to concerns that this is effectively allowing for banking or a transfer of allowances from 2010 to a later year, EPA disagrees. While EPA does not allow banking of allowances beyond the control period in which they are issued, nothing in the regulations bans companies from producing or importing HCFCs with allowances and then storing the material over time. Companies receiving recoupment were deprived of their ability to import and/or produce HCFCs in 2010 at a level consistent with the Court's decision in *Arkema*. Had they received the requisite level of allowances in 2010, they could have expended them during 2010 to produce or import HCFCs and banked those HCFCs until at least the years covered by this rulemaking. EPA also disagrees with one commenter's characterization of recoupment as an effective transfer of 2010 allowances to later years. Contrary to the commenter's assertion, EPA did not adopt this characterization in the proposal, but instead simply pointed out that the regulations do not allow banking or borrowing of allowances. The commenter quotes section 607(a), which states that EPA regulations must ensure

that transfers "will result in greater total reductions in the production in each year of * * * class II substances than would occur in that year in the absence of such transactions." The commenter asserts that if recoupment is provided, the aggregate allowance total will be higher than it would have been if no recoupment were provided. However, EPA disagrees that section 607(a), which is titled "Transfers," has any application to this situation. Section 607(a) refers specifically to "transactions under the authority of this section." An EPA rulemaking providing allowances is not such a transaction. The transactions in question are the "transfers" and "trades" within or between companies explicitly discussed in section 607. EPA has implemented section 607(a) by requiring an offset for all intra-company and inter-company transfers. See, e.g., 40 CFR 82.23(a)(i)(G).

Additionally, commenters assert that providing recoupment allowances would mean taking allowances away from others or distorting market share. One commenter said that providing recoupment is in violation of the *Arkema* decision, asserting that a company's allowances, or its share of allowances, are a vested right. EPA disagrees with this comment on both factual and legal grounds. First, as a result of the *Arkema* Court's partial vacatur of the 2009 Final Rule, there are currently no production or consumption allowances for HCFC–22 in 2012–2014. This final rule is filling a gap, rather than reshuffling existing allowances or existing market share. Second, even in the context of today's allocation, EPA is not allocating fewer allowances to one company for the purpose of allocating more to a different company. EPA is allocating a fixed percentage of baseline to each baseline holder at a level that in the aggregate is expected to meet servicing demand, taking into account the amount of such demand that can be met through other sources. EPA is then allocating recoupment allowances to certain companies on top of that fixed percentage allocation. Regarding market share, the allocation of recoupment allowances is limited to two years; thus, as a practical matter, it is unlikely to cause a permanent shift in market share. In addition, market share is not a simple reflection of EPA's allocation of allowances: For example, some companies buy or sell allowances and thus increase or decrease the volume of their business in a particular HCFC or HCFCs generally.

Furthermore, EPA takes issue with the commenter's characterization of the *Arkema* decision. In *Arkema*, the Court held that the petitioners had a vested right in transferred baselines where EPA had taken affirmative steps to approve the transfers by issuing non-objection notices. The commenter attempts to broaden the decision to state that allowance holders have vested rights in any and all allowances issued under the stratospheric ozone program, and in addition, to a specific market share or value attached to those allowances. EPA disagrees with this broad reading and believes the Court's ruling is closely tied to its factual findings concerning the 2008 transfers. This issue is discussed further at section IV.A.1.

Two commenters state that there was a significant oversupply of HCFC allowances in 2010, that the petitioners in *Arkema* were not harmed by the 2010 allocation in the 2009 Final Rule, and that they would receive a windfall if EPA were to provide recoupment allowances. However, the fact that not all HCFC allowances were used in 2010 does not mean that particular companies were not harmed. Companies' individual situations and business plans may differ. Also, although the commenter cites the Court's denial of the motions to stay the 2009 Final Rule as evidence that petitioners were not harmed in 2010, harm to the moving party is only one of the criteria considered by a court in reviewing a stay motion. Thus, it is erroneous to assume that the Court's denial equates to a ruling that petitioners suffered no harm.

Several commenters stated that providing recoupment allowances would harm human health or the environment; however, this action as a whole protects human health and the environment by allocating significantly fewer allowances in 2012–2014 than the agency allocated in the 2009 Final Rule. Viewed in relation to that rule, EPA is reducing the total number of HCFC–22 consumption allowances (after providing for recoupment) by more than 31,100 MT over those three years. As a result, providing recoupment does not increase the allowed amount of HCFC–22 production and importation for U.S. use relative to the 2009 Final Rule. Even with recoupment, total U.S. consumption will be at least 55 percent below the Montreal Protocol consumption cap. This overall decrease in consumption also increases the incentives for recovery and reclamation. In addition, as noted in the proposal, the amount of recoupment being granted (329 ODP-weighted MT of allowed HCFC consumption and 280 ODP-weighted MT of allowed HCFC production) is smaller than the number of allowances that were not used by allowance holders in 2010 (approximately 425 ODP-weighted MT of HCFC consumption allowances and approximately 930 ODP-weighted MT of HCFC production allowances). EPA's response to additional comments on whether to provide recoupment can be found in the Response to Comments.

The agency presented four possible options with regard to recoupment for 2010: (1) Providing recoupment allowances in 2013 in addition to (i.e., on top of) the aggregate level of production and consumption; (2) allocating recoupment allowances over two years (2013–2014) in addition to (i.e., on top of) the aggregate level of production and consumption; (3) allocating recoupment allowances from the aggregate level of production and consumption over two years (2013–2014); and (4) not issuing recoupment allowances. Five comments specifically support one or more of these options. One comment supports option 1, two comments support option 3, and two comments support option 4. Two additional comments do not directly support an option, but raise concerns with options 1 and 2.

EPA stated in the proposed rule that if it decided to issue recoupment, it would prefer option 1. However, after reviewing comment and considering the options further, the agency believes option 2 is the best approach for ensuring a smoother path towards 2015, when U.S. consumption and production of all HCFCs must be at or below 10% of baseline under the Montreal Protocol. In addition, it does not reduce the number of allowances available to companies not receiving recoupment. Also, in light of EPA's decision to reduce the overall HCFC–22 allocation significantly in relation to the 2009 Final Rule, EPA can adopt option 2 while still issuing fewer consumption allowances in 2013 and 2014 than it did under the 2009 Final Rule.

Option 1 could flood the market in 2013, providing significantly more allowances in that one year than in either 2012 or 2014, creating an even more significant drop-off in the number of allowances between 2013 and 2014. EPA also has serious concerns about option 3. Commenters in support of option 3 state that companies were "on notice" that 2010 allowances were in dispute before the Court, so EPA should reduce allowances for companies not receiving recoupment to make Arkema and Solvay whole. However, the court rejected petitioners' stay motion and stayed its own mandate, with the result that companies were operating under the 2009 Final Rule for all of 2010. Thus, companies that produced or

imported HCFCs during 2010 using consumption and production allowances received under the 2009 Final Rule were acting in accordance with the regulations in effect at that time.

Commenters in support of option 3 also claim that since refrigerant customers prefer to purchase all refrigerants from one supplier, and they could not provide sufficient quantities of HCFC–22 to some of their customers, the 2009 Final Rule resulted in a loss of sales of other refrigerants during 2010. EPA strongly believes that if a company loses its ability to sell to one-stop shoppers when it loses allowances, the inverse should also be true: Providing additional allowances in 2013 and 2014 equal to the amounts lost in 2010 should provide approximately the same ability to compete for sales to one-stop shoppers as was lost in 2010.

Only two comments addressed whether EPA should provide recoupment for both HCFC–22 and HCFC–142b, or just HCFC–22. One commenter supported providing recoupment for both substances, as it ensures traceability and consistency. The other commenter believes EPA should provide recoupment for HCFC–142b based on a total allowance pool of 118 metric tons (the amount allocated for 2010 in the 2009 Final Rule), instead of using a total allowance pool of 463 MT (the amount that results from the revised baselines, which are the same as the baselines proposed in 2008). According to the commenter, this means that the agency need only provide 69.8 metric tons of HCFC–142b production allowances in recoupment.

EPA does not agree with the commenter that it should scale HCFC–142b recoupment production allowances to match the exact amount allocated in 2010. The agency is providing recoupment production allowances based on what it proposed in 2008 (73 FR 78680). In 2008, the percent of baseline was the same for both consumption and production. EPA is therefore using the baseline amount and percentage proposed in 2008 to calculate recoupment for HCFC–142b production. The HCFC–142b production baseline is much larger than the consumption baseline (when accounting for the 2008 transfers), so the resulting 2010 allocation would have been much larger, while the consumption allocation would have been approximately the same under either baseline scenario. Issuing recoupment based on the 2008 proposal results in approximately 397 MT of additional HCFC–142b production allowances. Since manufacturing HCFC–142b in the U.S. for domestic use requires production and consumption allowances, the agency anticipates that the only potential increase in HCFC–142b production as a result of recoupment would be for export.

One commenter encouraged EPA to account for a company's unused allowances from 2010 if EPA is providing that company with recoupment allowances. To do this, EPA would need to divulge information about how each company uses its allowances: such company-specific information has never been disclosed in the HCFC phaseout program, and EPA would need to consider claims of confidentiality before taking such a step. Also, EPA does not believe it is necessary to account for a company's unused allowances because the agency is providing allowances to make up for the lost opportunity to produce or import HCFCs, not the specific usage or lack thereof. As a result, EPA is not adjusting for a company's unused allowances in 2010.

To effectuate option 2, the agency is issuing half of the recoupment allowances for each company in 2013 and the other half in 2014 and is amending the regulatory text at 40 CFR 82.16(a) accordingly. Recoupment allowances allocated for 2013 and 2014 will function in the same way as other calendar year allowances: They can be used only in the calendar year for which they are issued and will expire at the end of that calendar year. The agency believes the issuance of these recoupment allowances discharges its obligation to consider the 2010 control period in responding to the remand in *Arkema*. Table 1 lists the companies receiving recoupment, the substance, and the total number of recoupment allowances:

TABLE 1—FINAL RECOUPMENT ALLOWANCES

Company	Chemical	Consumption (kg)	Production (kg)
Arkema	HCFC–22	4,749,692	4,611,848
DuPont	HCFC–142b	2,339	0
Honeywell	HCFC–142b	58,291	107,097
Solvay Fluorides	HCFC–22	1,157,895	0
Solvay Solexis	HCFC–142b	0	289,800

A full summary and response to all other comments are included in the Response to Comments.

7. Does EPA have to provide the same percentage of baseline for production allowances as it does for consumption allowances?

In considering how to allocate HCFC–22 production allowances for 2012–2014, the agency proposed to decouple production and consumption baseline percentages. Historically, there has only been one table at 40 CFR 82.16, which lists the percentage of baseline (both production and consumption) that every baseline allowance holder is issued each year. EPA proposed to create two tables, and to allocate a different percentage of baseline for production than for consumption. Decoupling would allow the agency to reduce consumption allowances in relation to the 2009 Final Rule without having to make the same reductions to production allowances. EPA stated its interpretation that section 605(c) of the CAA does not preclude EPA from decoupling baseline percentages and requested comment on this issue. EPA received two comments specifically addressing whether the statute precludes decoupling.

Section 605(c) states that EPA must "promulgate regulations phasing out the production * * * of class II substances in accordance with [section 605]," subject to any acceleration under section 606. It further states that EPA must "promulgate regulations to insure that the consumption of class II substances in the United States is phased out and terminated in accordance with the *same schedule* (emphasis added) * * * as is applicable to the phase-out and termination of production of class II substances under [Title VI]." Because the phrase "same schedule" is not clear on its face, the agency considered three possible interpretations of the phrase "same schedule," as explained in the proposal

and in the 2011 Interim Final Rule. The agency stated that interpreting "same schedule" as referring to the phaseout schedule that appears in section 605, as accelerated under section 606, would be most consistent with the statutory language and purpose. Examples of milestones in the phaseout schedule are the 2010 and 2015 phasedown steps. The agency clarified that it was not proposing to allow production in an amount that would be inconsistent with those phasedown steps, but simply proposing to allow a greater amount of production than consumption, with both amounts below the Montreal Protocol and CAA caps. The one company that provided comment on this matter agreed with the agency, and said that it does not believe that production and consumption allowances are somehow tied to the same regulatory schedule (requiring the same number of allowances or percentages of baseline for production and consumption). Rather, the commenter states that production and consumption are tied to the same statutory and treaty schedule, and that the agency should provide for increased production.

The other comment on decoupling was from a group of environmental organizations, who supported a decrease in production allowances relative to the 2009 Final Rule. They believe that the language in section 605(c) equates the quantity of consumption and production allowances and cannot be interpreted to allow more production than consumption in a given year.

EPA disagrees that the language in 605(c) equates the quantity of consumption and production allowances. EPA has never allocated the same quantity of production and consumption allowances, only the same percentage of baseline. The agency would have to provide different percentages of baseline for calendar-year consumption and production allowances to keep the allowance quantities the same since the number of aggregate baseline production allowances is not equal to the number of aggregate baseline consumption allowances. Additionally, EPA does not believe there is a single "natural reading" of section 605(c), as the comment suggests. Rather, the language is ambiguous. As explained in the proposed rule, there are at least three possible interpretations. EPA's interpretation that the word "schedule" in section 605(c) refers to the schedule that appears in section 605, as accelerated under section 606, is reasonable. In section 606, Congress used the word "schedule" to refer to a more-stringent schedule than the schedule set forth in section 605: "The Administrator shall promulgate regulations * * * which establish a schedule for phasing out the production and consumption of * * * class II substances * * * that is more stringent than set forth in section 7671d [section 605]." The original section 605 schedule limited production and consumption to baseline quantities in 2015 and required a complete phaseout (with some exceptions) in 2030. It is logical that Congress would have intended the more-stringent schedule established under section 606 to have a similar structure: That is, to cap or eliminate production and consumption on certain milestone dates. EPA in fact established just this type of schedule at 40 CFR 82. 16(b)–(g). EPA has discretion in managing the allowance system to achieve this schedule. Therefore, the agency believes it can issue calendar-year consumption and production allowances using different percentages of baseline, as long as it complies with the overall schedule set by Congress, as accelerated under section 606.

Discussion of EPA's policy decision to decouple baseline percentages is found in section IV.C.2.

C. How many HCFC–22 and HCFC–142b allowances is EPA allocating in 2012–2014?

The agency is revising the tables in 40 CFR 82 that together specify the production and consumption allowances available during specified control periods. The tables at sections 82.17 and 82.19 apportion baseline production allowances and baseline consumption allowances, respectively, to individual companies for specific HCFCs during a particular regulatory period. Complementing these tables, the table at section 82.16 lists the percentage of baseline allocated to allowance holders for specific control periods. In this rulemaking, EPA is (1) retaining this framework of complementary tables, (2) establishing baselines for 2012–2014 identical to those established in the 2011 Interim Final Rule (76 FR 47451), (3) granting allowances based on percentages of baselines in a manner that achieves the 2010 phaseout step and lays the groundwork for the next phaseout step in 2015, and (4) providing recoupment allowances.

In the 2009 Final Rule, 34.1 percent, 30.1 percent, and 26.1 percent of each company's HCFC–22 baselines were allocated for 2012, 2013, and 2014, respectively. The allocation for HCFC–142b was 0.47 percent of baseline. As discussed in section III.D. of this final rule, EPA interpreted the Court's vacatur as applying to the HCFC–22 and HCFC–142b allocations for each of these years as well as the baselines. EPA is putting in place new allocations through this rulemaking, and proposed various allocation amounts for consumption and production allowances during the remainder of this regulatory period.

1. How many HCFC–22 consumption allowances is EPA allocating in 2012–2014?

The 2009 Final Rule allocated 40,700 MT of HCFC–22 consumption allowances in 2012, which was 76.5 percent of estimated servicing need, and 59 percent of the total 2012 HCFC consumption cap. EPA arrived at this amount by estimating the amount of servicing need, taking recovery and reclamation into consideration. EPA then finalized an allocation that was 12,500 MT below estimated need. Using a similar approach, EPA proposed to allocate 11 to 38 percent less in 2012 relative to the 2009 Final Rule (see the Adjustment Memo in the docket for the rationale behind the proposed reduction). In the 2009 Final Rule, 2013 and 2014 consumption allocations were 35,900 MT and 31,100 MT, respectively. The agency proposed to allocate 13 to 42 percent less in 2013 and 15 to 47 percent less in 2014.

As discussed in sections IV.B.1. and IV.B.2., comments directly addressing reclamation, recovery, and reuse, and the availability of existing inventory from past years generally support EPA's estimates of the inventory and recoverable material that are available each year to meet HCFC–22 servicing need. The agency also received 54 comments (some signed by multiple organizations) that address the overall consumption allocation in more general terms. Forty-two comments support the decrease in allowances relative to the 2009 Final Rule and 13 comments oppose the decrease. In addition to these comments, EPA received 47 additional comments that oppose a decrease in HCFC–22 production, but use the word "production" in a general sense. Upon reading, EPA believes the intent was to oppose a decrease in consumption, or "production for U.S. use."

Generally, comments in support of the reduction state that a lower allocation will increase the value of HCFC–22, resulting in more reclamation and increased incentives to recover HCFC–22 from existing systems. A lower allocation encourages an orderly phaseout and still provides enough allowances to meet servicing needs. Supporters of a lower allocation state

that a reduction is justified because of lower-than-expected need for HCFC–22 and the availability of existing inventory from past years. Three environmental organizations state that a reduction is (1) necessary to protect human health and the environment, and (2) practicable in terms of technology, safety, and availability of alternatives.

Comments supporting a higher HCFC–22 consumption allocation cite concerns about higher price, limited access to refrigerant and unexpected costs, all of which could lead to premature system retirements. Others point to U.S. compliance with the Montreal Protocol under the 2009 Final Rule, and are against any reductions to those allocation levels.

EPA responds to individual comments in the Response to Comments, but generally agrees that the amount of HCFC–22 provided in the 2009 Final Rule was too high to foster an orderly transition. In 2015, the U.S. must reduce its production and consumption of all HCFCs to below 10 percent of its historic HCFC baseline under the Montreal Protocol. By 2020, HCFC production and consumption must be below 0.5 percent of the historic baseline and under EPA regulations HCFC–22 may not be produced or imported at all. Rather than create a drastic change in 2015, the agency's goal is to finalize an allocation for 2012–2014 that fosters the market transition necessary to prevent future disruptions.

Considering that objective, EPA is providing allowances in this final rule based on its assessment of market conditions. For 2012, the timing of this rule means that EPA is looking back at actual events during 2012 rather than projecting future needs. The agency is issuing 2012 HCFC–22 consumption allowances at the lowest proposed amount, because that amount is consistent with the industry's actual operation in 2012. The appropriateness of this level is supported by the fact that EPA has not received any reports of HCFC shortages during the 2012 air-conditioning season. At the same time, this level is commensurate with the amount of consumption authorized in the January 20, 2012, No Action Assurance provided by Cynthia Giles, Assistant Administrator for Enforcement and Compliance Assurance. EPA selected this amount as reasonable for purposes of the No Action Assurance, recognizing that it was within the proposed range. Issuing allowances at the No Action Assurance level enables companies to account for consumption that occurred in 2012 in accordance with the No Action Assurance. As stated in the No Action Assurance, any HCFCs produced and imported in 2012 pursuant to the No Action Assurance count towards a company's allocation and require the expenditure of 2012 allowances.

In 2013–2014, EPA is making reductions for existing inventory and for reclamation and reuse, given the support of comments on the agency's analysis and additional data provided during the comment period. EPA is not reducing allowances to account for recovery and reuse in the large retail food sector because there were not sufficient comments or data, and the agency already accounts for supermarket recovery (but not in-house reuse) in its Vintaging Model. With these adjustments, the amount of allowed consumption in 2012–2014 is 29 percent below amounts in the 2009 Final Rule for the same period. The agency believes that the amounts in this rulemaking will increase market incentives to properly manage and recover HCFC–22 while still allowing for servicing of existing HCFC–22 systems.

EPA is finalizing the following HCFC–22 consumption allocations for 2012–2014:

2012: 17.7 percent of baseline, totaling approximately 25,100 MT
2013: 18.0 percent of baseline, plus 2,954 MT of recoupment, totaling approximately 28,500 MT
2014: 14.2 percent of baseline, plus 2,954 MT of recoupment, totaling approximately 23,100 MT

With this amount, EPA's total HCFC consumption allocation in 2012–2014, including recoupment, is at least 55 percent below the Montreal Protocol cap each year, and is below servicing need as estimated in the *Servicing Tail Report*.

2. How many HCFC–22 production allowances is EPA allocating in 2012–2014?

In the proposed rule, EPA described three options for providing production allowances. In considering each of these options, EPA recognized that taking the 2008 transfers into account in accordance with the *Arkema* decision affects not only the HCFC–22 consumption baseline, but the HCFC–22 production baseline as well. Two options would have decoupled baseline percentage allocated for production and consumption. These options provided (1) approximately the same amount of production allowances as the 2009 Final Rule or (2) the same percentage of baseline as the 2009 Final Rule. The third option would have kept production and consumption allowances at the same percentage of baseline, so the resulting production allocation would be dependent on the final consumption baseline percentage. Option 3 is reflected in the January 2012 and January 2013,[8] No Action Assurances sent to allowance holders by the Assistant Administrator for Enforcement and Compliance Assurance. EPA took comment on providing the following percentages of baseline production in 40 CFR 82.16:

Option 1: 28.7% in 2012, 25.3% in 2013, 21.9% in 2014
Option 2: 34.1% in 2012, 30.1% in 2013, 26.1% in 2014
Option 3: 17.7% to 25.5% in 2012, 14.7% to 22.1% in 2013, 11.6% to 18.5% in 2014

Under option 1, the aggregate allocation in 2012 would be about two percent lower than in the 2009 Final Rule (37,050 MT in the proposed rule vs. 37,721 MT in the 2009 Final Rule). The intent would be to keep the aggregate number of allowances at about the same level as the amount finalized in the 2009 Final Rule. The memo to the docket for this rulemaking titled "Effects of HCFC–22 and HCFC–142b Baseline Changes: 2009 Final Rule vs. 2011 Proposed Rule," (Baseline Memo) explains these slight differences. While this option would keep the aggregate number of allowances at about the same level, U.S. production could actually fall under this option, because under *Arkema* a greater share of the allowances would go to a company that does not produce in the U.S.[9]

Under option 2, the production baseline percentage would be the same as in the 2009 Final Rule. The petitioners in *Arkema* would receive the benefit of their 2008 baseline transfers; other companies with production baselines would get the same number of production allowances as they received in the 2009 Final Rule, since their baselines did not change. While the percentage is the same as the 2009 Final Rule, since the aggregate production baseline is higher, the number of production allowances increases by

[8] The January 2013 No Action Assurance also preserved all recoupment options.

[9] Data submitted to the Greenhouse Gas Reporting program on byproducts of the HCFC–22 production process indicates that only three of the four companies holding production allowances produced HCFC–22 in 2010 and 2011 (see *http://ghgdata.epa.gov/ghgp/main.do* and the memo in the docket titled "2010–2011 Greenhouse Gas Reporting Program Data on HCFC–22 Production Byproducts"). While this company can transfer its allowances to another producer, the fact that they do not produce in the U.S. makes it unlikely that all calendar-year production allowances will be used.

6,299 MT in 2012, 5,560 MT in 2013, and 4,821 MT in 2014. However, as noted above, this would not necessarily translate to an increase in production.

In addition to asking for comment on the two proposed decoupling options, the agency also asked for comment on several related matters. EPA asked for comment on whether, relative to the 2009 Final Rule, allocating the same percentage of baseline for production allowances, as proposed under option 2, would result in (1) an increase in U.S. consumption, (2) an increase in U.S. production, either for domestic use or for export, and/or (3) an increase in worldwide production and/or consumption of HCFCs. EPA also invited comment on the implications of any such increase for the U.S. economy and the global environment, particularly as it relates to the smooth U.S. phaseout of HCFC–22.

EPA received nine comments on EPA's proposed production allocation. Six comments support a higher level of production allowances than consumption allowances (options 1 and 2) and three comments oppose a higher level of production allowances. EPA provides a complete summary of and response to all comments in the Response to Comments, but highlights and responds to most of the comments in this preamble.

Very few comments voiced a preference for a specific production option. However, two commenters specifically support option 2, which provides for the same percentage of baseline as provided in the 2009 Final Rule. Five commenters are in support of options 1 and 2 so that domestic companies can remain competitive in the global market. One commenter indicates U.S. companies could lose global market share if production allowances were not decoupled. Four commenters point out that allocating more production allowances than consumption allowances could allow for the possibility of more export, but will not lead to increased domestic consumption since consumption allowances limit the amount of newly-produced HCFC–22 entering the U.S. market. Comments also indicate allowing production in the U.S. could be environmentally beneficial if it displaces production at facilities that do not control byproduct emissions of hydrofluorocarbon (HFC)–23, which has a global warming potential of 14,800.[10] The comment cites the growth of HFC–23 emissions globally and indicates that facilities in Article 5 countries do not control HFC–23 emissions to the same degree as companies operating in the U.S. Since U.S. producers of HCFC–22 largely control their HFC–23 byproduct emissions, the comment states that production in the U.S., as opposed to other countries, could actually result in lower greenhouse gas emissions.

Comments opposing options 1 and 2 note that the Protocol and domestic regulations already allow for additional production in order to serve basic domestic needs of developing countries in the form of Article 5 allowances. They argue that allowing more production than consumption may increase the global surplus of HCFC–22 and decrease price, thus discouraging appropriate handling of the gas. They argue this could lead to an increase in global use and emissions of HCFC–22. One commenter also states that if a reduction in consumption allowances is justified, so is a decrease in production allowances for the same reason.

EPA does not agree that options 1 and 2 increase environmental harm relative to the 2009 Final Rule. First, EPA would only be providing the same number of overall production allowances or the same percentage of baseline for production as in the 2009 Final Rule. In the proposal, EPA also noted that production of one kilogram of an HCFC requires both a production allowance and a consumption allowance (82.15(a)(1), (2)). Thus, leaving production allowances at the same percentage or at the same overall amount without a corresponding increase in consumption allowances cannot result in greater U.S. consumption. Also, in order to produce for export, a company must submit documentation to verify the export of an HCFC for which consumption allowances were expended in order to request a reimbursement of spent consumption allowances. The agency reviews the documentation and issues a notice to either deny or grant the request. Therefore, a company would not be able to produce more HCFC–22 unless it had exported an equal amount of material and been granted a refund of spent consumption allowances. Additionally, since HCFC consumption is capped globally under the Montreal Protocol, companies exporting HCFCs are constrained by the consumption caps established in the country receiving the material.

With regard to HFC–23, EPA has worked with industry through its HFC–23 Emission Reduction Partnership to encourage companies to reduce HFC–23 byproduct emissions from the manufacture of HCFC–22. In the 2010 U.S. Climate Action Report, the agency noted that "despite a four percent increase in the production of HCFC–22 compared to 1990, EPA estimates that total HFC emissions in 2007 were significantly below 1990 levels. Compared to business as usual, EPA estimates the partnership reduced emissions by 17.8 Tg CO2 Eq. in 2007," (see page 55 of the *U.S. Climate Action Report 2010,* available in the docket). Currently, some HFC–23 emissions in Article 5 countries are mitigated through Clean Development Mechanism (CDM) projects using destruction technologies, namely thermal oxidation or plasma arc. However, not all HCFC–22 facilities are eligible to earn credits under CDM; therefore, a number of facilities may not have emission reduction technology installed. There are about 26 plants producing HCFC–22 in Article 5 countries. Approximately 17 plants have CDM projects that control HFC–23 byproduct emissions. The remaining nine plants may not have emissions control technologies installed. HCFC–22 production in the United States may provide environmental benefits in reduced HFC–23 emissions to the extent U.S. production supplants the Article 5 production in those specific plants that do not have HFC–23 byproduct destruction technologies installed.

Some commenters argue that EPA will increase the global supply of HCFC–22 by allocating more production than consumption allowances. EPA disagrees. First, by decreasing consumption allowances relative to the 2009 Final Rule, EPA is decreasing potential U.S. consumption of virgin material by more than 31,100 MT over 2012–2014. Even if every single additional production allowance was used for export, global consumption would still be at least 9,800 MT less than the allocations provided in the 2009 Final Rule if all other factors are constant. Because at least one company holding production allowances does not produce HCFC–22 in the United States, it is unlikely that every production allowance will be used. As a result, the net reduction in global consumption of HCFC–22 may be even greater. Finally, starting in 2013, Article 5 countries' consumption of HCFCs is capped, which further limits global HCFC–22 demand (*see* Montreal Protocol Art. 5, para. 8 *ter.*). As noted below, EPA is issuing production allowances using the same percentages as in the 2009 Final Rule only for the 2013 and 2014 control periods.

EPA is also concerned that decreasing production allowances for the

[10] Source for the GWP of HFC–23: Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report: Climate Change 2007 (AR4)

remainder of the current regulatory period could deprive certain U.S. manufacturers of existing global business. Article 5 allowances already allow the export of HCFC–22; but only to Article 5 countries. Providing more production than consumption allowances could allow companies to continue exporting to non-Article 5 countries, which have the same overall Montreal Protocol phaseout schedule as the United States but may use a basket approach rather than a chemical-by-chemical approach to phasing out HCFCs. Also, using the same percentage of baseline as the 2009 Final Rule should allow companies to continue their exports to Article 5 countries, which are just beginning to phase out HCFCs. Since consumption allowances already limit production for U.S. use, EPA is providing the same percentage of baseline for HCFC–22 production as in the 2009 Final Rule beginning in 2013 to avoid a scenario in which U.S. manufacturers might have to decrease their production for global markets relative to the amount allowed under the 2009 Final Rule. As noted previously, U.S. production may provide environmental benefits when compared to production in plants that lack HFC–23 byproduct destruction technologies.

Recognizing the timing of this rule's signature, and the fact that Article 5 countries' HCFC consumption is not capped until 2013, the agency is adopting a different approach for 2012 than for 2013 and 2014. The agency is issuing 2012 HCFC–22 production allowances at the lowest proposed amount, because that amount is consistent with the industry's actual operation in 2012. The appropriateness of this level is supported by the fact that EPA has not received any reports of HCFC shortages during the 2012 air-conditioning season. At the same time, this level is commensurate with the amount of production authorized in the January 20, 2012, No Action Assurance provided by Cynthia Giles, Assistant Administrator for Enforcement and Compliance Assurance. EPA selected this amount as reasonable for purposes of the No Action Assurance, recognizing that it was within the proposed range. Issuing allowances at the No Action Assurance level enables companies to account for production that occurred in 2012 in accordance with the No Action Assurance. As stated in the No Action Assurance, any HCFCs produced in 2012 pursuant to the No Action Assurance count towards a company's allocation and require the expenditure of 2012 allowances. EPA is finalizing production option 2 for 2013 and 2014.

In summary, EPA believes providing the same percentage of baseline as used in the 2009 Final Rule for production allowances in 2013–2014 (1) cannot lead to an increase in U.S. consumption, (2) allows U.S. producers to produce the same amount as under the 2009 Final Rule, with potential environmental benefits to the extent that production might otherwise occur in plants that lack HFC–23 byproduct destruction technologies, and (3) would not result in a global increase in production or consumption of HCFC–22 beyond the limits agreed to under the Montreal Protocol. In addition, the environmental benefits achieved by the reduction in consumption allowances outweigh any potential increase in U.S. production. As such, EPA is allocating the following amounts of HCFC–22 production allowances in 2012–2014:

—2012: 17.7% of baseline, resulting in approximately 22,800 MT of HCFC–22 production
—2013: 30.1% of baseline, plus 2,306 MT of recoupment, resulting in approximately 41,200 MT of HCFC–22 production
—2014: 26.1% of baseline, plus 2,306 MT of recoupment, resulting in approximately 36,000 MT of HCFC–22 production

Combined with allowed production for other HCFCs, these finalized amounts are at least 36 percent below the Montreal Protocol production cap of 3,884.25 ODP-weighted MT.

3. How many HCFC–142b consumption and production allowances is EPA allocating in 2012–2014?

Establishing HCFC–142b baseline allowances that take into account the 2008 inter-pollutant transfers results in 2,047 MT of aggregate baseline consumption allowances and 9,444 MT of aggregate baseline production allowances. Consistent with the 2009 Final Rule, EPA proposed to allocate 100 MT of consumption allowances. To get to that level, EPA would allocate 4.9 percent of the aggregate consumption baseline, as reflected in the table at section 82.16.

Using the same percentage (4.9 percent) of the aggregate production baseline, EPA proposed to allocate 463 MT of HCFC–142b production allowances for each control period between 2012 and 2014. The aggregate allocation for production is higher than the amount allocated in the 2009 Final Rule (463 MT in this rule vs. 118 MT in the 2009 Final Rule). This is because the 2008 transfers out of HCFC–142b involved significantly more consumption allowances than production allowances. Taking those transfers into account decreases the HCFC–142b consumption baseline substantially but has a lesser impact on the HCFC–142b production baseline.

The agency received only four comments on HCFC–142b allocations. Two comments strongly support reducing HCFC–142b consumption and production allowances; one of these commenters states that HCFC–142b is only used in blends to service old CFC equipment. Of the other two comments, one supports the consumption allocation of 100 MT, noting that HCFC–142b is a critical component of a refrigerant blend, but that production allowances need not increase. The other commenter asks that EPA not lower the HCFC–142b production allocation to compensate for any increase in HCFC–22 production.

EPA did not propose to decrease HCFC–142b allowances in the proposed rule. The agency assessed the need for the chemical in the 2009 Final Rule and will revisit the need for HCFC–142b for servicing during the rulemaking for the next regulatory period. For this reason, the agency is finalizing its proposed consumption and production allocations for HCFC–142b. There will be 100 MT of HCFC–142b consumption allowances and 463 MT of production allowances issued in the years 2012, 2013, and 2014. These allowance amounts are 4.9 percent of the HCFC–142b baselines, and keep the HCFC–142b consumption allocation approximately the same as in the 2009 Final Rule.

To provide recoupment to companies for lost opportunities in 2010, EPA is allocating a total of 61 MT of HCFC–142b consumption allowances and 397 MT of HCFC–142b production allowances in addition to the percentage of baseline issued. Since the agency is providing recoupment over two years, there will be an additional 30 MT of consumption allowances and 198 MT of production allowances in 2013 and 2014. See section IV.B.6. of this preamble for more discussion on recoupment allowances.

4. How does the aggregate allocation for HCFC–22 and HCFC–142b translate entity-by-entity?

For 2012–2014, EPA is setting production and consumption baselines for HCFC–22 and HCFC–142b on the same basis as in the 2009 Final Rule, except that EPA is making adjustments to reflect (1) the 2008 inter-pollutant transfers of baseline allowances deemed permanent by the Court, (2) inter-

company, single-pollutant transfers of baseline allowances that occurred in 2010, and (3) changes in company names that occurred after the 2009 Final Rule was signed. All of these changes were made in the 2011 Interim Final Rule (76 FR 47451), and EPA proposed to do the same for 2012–2014. Applying the approach described above, EPA is apportioning production and consumption baselines for HCFC–22 and HCFC–142b to the following entities in the following amounts:

TABLE 2—BASELINE PRODUCTION ALLOWANCES OF HCFC–22 AND HCFC–142B IN 40 CFR 82.17

Person	Controlled substance	Allowances (kg)
Arkema	HCFC–22	46,692,336
	HCFC–142b.	484,369
DuPont	HCFC–22	42,638,049
Honeywell	HCFC–22	37,378,252
	HCFC–142b.	2,417,534
MDA Manufacturing.	HCFC–22	2,383,835
Solvay Solexis	HCFC–142b.	6,541,764

TABLE 3—BASELINE CONSUMPTION ALLOWANCES OF HCFC–22 AND HCFC–142B IN 40 CFR 82.19

Person	Controlled substance	Allowances (kg)
ABCO Refrigeration Supply.	HCFC–22	279,366
Altair Partners	HCFC–22	302,011
Arkema	HCFC–22	48,637,642
	HCFC–142b.	483,827
Carrier Corporation.	HCFC–22	54,088
Coolgas Investment Property.	HCFC–22	1,040,458
DuPont	HCFC–22	38,814,862
	HCFC–142b.	52,797
H.G. Refrigeration Supply.	HCFC–22	40,068
Honeywell	HCFC–22	35,392,492
	HCFC–142b.	1,315,819
Mexichem Fluor Inc.	HCFC–22	2,546,305
Kivlan & Company.	HCFC–22	2,081,018
MDA Manufacturing.	HCFC–22	2,541,545
Mondy Global	HCFC–22	281,824
National Refrigerants.	HCFC–22	5,528,316
Refricenter of Miami.	HCFC–22	381,293
Refricentro	HCFC–22	45,979
R-Lines	HCFC–22	63,172
Saez Distributors	HCFC–22	37,936
Solvay Fluorides	HCFC–22	3,781,691
Solvay Solexis	HCFC–142b.	194,536
USA Refrigerants	HCFC–22	14,865

The finalized baselines listed above are identical to the tables presented in the 2011 Interim Final Rule (76 FR 47451).

V. How is EPA changing the regulations governing transfers of Class II allowances?

The agency is concerned about the possibility of companies undermining the HCFC chemical-by-chemical phaseout by performing inter-pollutant transfers in advance of future phaseout steps. EPA interprets the 2003 Final Rule, which established the transfer provisions at 40 CFR 82.23, as allowing only single-pollutant, inter-company transfers to be made on a permanent basis. Nevertheless, EPA recognizes that in *Arkema,* the Court found that "EPA's practice under the 2003 Rule was to allow petitioners' baseline transfers of inter-pollutant allowances" (618 F.3d at 8). Therefore, EPA clarified its current policy on inter-pollutant transfers in the 2011 Interim Final Rule (76 FR 47459). In January 2012, EPA proposed to modify the regulatory text to dispel any possibility of confusion in the future.

Through this final action, the agency is modifying 40 CFR 82.23 to address the duration of inter-pollutant transfers, and to reflect prior agency statements pertaining to inter-pollutant transfers of Article 5 allowances.

A. How is EPA changing the regulations governing permanent transfers of Class II allowances?

Sections 607(b) and (c) of the CAA address inter-pollutant and inter-company transfers of allowances, respectively. Inter-pollutant transfers are the transfer (or conversion) of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. Inter-company transfers are transfers of allowances for the same ODS from one company to another company. Section 607(c) also authorizes inter-company transfers combined with inter-pollutant transfers, so long as the requirements of both are met. The corresponding regulatory provisions for HCFCs appear at 40 CFR 82.23.

EPA proposed to modify section 82.23 to clarify that the agency will not approve future inter-pollutant transfers of baseline production allowances or baseline consumption allowances. EPA received two comments directly referring to this proposal. One comment supports EPA's proposed changes because it will prevent future manipulation of the allowance program. The commenter also believes the CAA prohibits permanent inter-pollutant transfers. Another commenter encourages EPA to reconsider its proposed changes and to allow for inter-pollutant baseline transfers if an allowance holder has historically made the transfers. EPA also received two comments on the 2012–2014 baselines that are relevant. Both commenters state that section 607 of the CAA prohibits baseline inter-pollutant transfers.

As discussed in the proposed rule, EPA remains concerned about the potential for future manipulation of the allocation system if inter-pollutant baseline transfers are allowed to affect a company's baseline in future regulatory periods. For example, a HCFC–22 producer or importer could dominate the HCFC–123 market in 2015 by converting its HCFC–22 baseline to HCFC–123 baseline in 2014. Given the different ODPs of HCFC–22 and HCFC–123 (0.055 and 0.02, respectively), converting one baseline allowance of HCFC–22 would result in 2.75 baseline allowances of HCFC–123. Also, since companies hold many more HCFC–22 baseline allowances than HCFC–123 baseline allowances, converting those HCFC–22 baseline allowances would have an overwhelming effect on the current HCFC–123 baseline allowance holders and on the overall market.

As another example, in 2020 EPA will no longer be issuing HCFC–22 production or consumption allowances (see section 82.16(e)). EPA expects that companies with only HCFC–22 or HCFC–142b allowances would no longer be producing or importing HCFCs at that date. If EPA were to allow inter-pollutant baseline transfers that carried forward into the new regulatory period, companies with HCFC–22 baselines could convert them all to baselines for HCFC–123 in 2019. Perpetuating the HCFC–22 baselines in a new form would be counter to the design of the chemical-by-chemical phaseout, under which the baseline allowances for a particular chemical are intended to drop out of the system upon the phase-out of that chemical. Thus, there are important policy reasons for not taking inter-pollutant transfers from prior regulatory periods into account in

establishing baselines for new regulatory periods.

EPA has been clear in its past statements about its policy on what happens to allowances when a chemical is phased out. In the 1999 Advanced Notice of Proposed Rulemaking ("1999 ANPRM", 64 FR 16373), EPA discussed options for establishing the HCFC allocation system. Referring to HCFC–141b, which was phased out in 2003. EPA stated at 64 FR 16378:

> It is important to note that, under any scenario, when the phaseout date for HCFC–141b is reached in 2003, all HCFC–141b consumption (production + imports-exports) will cease. Those who did not participate in the HCFC–141b market will not be affected in 2003. However, those who did participate in the HCFC–141b market—through, for example, producing or importing HCFC–141b—would no longer receive any allowances associated with their historic HCFC–141b activity, and thus any authorization to produce or import HCFC–141b. *Likewise, any company that, through a baseline trade, received allowances associated with historic HCFC–141b would no longer receive any allowances associated with the baseline trade in 2003* (emphasis added).

In the 2001 Notice of Proposed Rulemaking for the HCFC allocation system ("2001 NPRM," 66 FR 38064), EPA elaborated further on what happens when a chemical is phased out under a chemical-by-chemical phaseout at 66 FR 38068–69:

> On the first HCFC phaseout date of 2003, those companies that received baseline consumption allocations (or received a permanent baseline transfer) * * * of HCFC–141b would subtract that portion from their total consumption allocation. If permanent inter-pollutant trades had been made, an amount equal to the ODP-weighted kilograms of baseline HCFC–141b allowances that had been received in the transfer would be deducted from the baseline allocation * * * *The same would occur in [later years] for the relevant chemicals being phased out* (emphasis added).

Finally, in the 2003 Final Rule establishing the HCFC phaseout, EPA stated its position at 68 FR 2835: "EPA will allow permanent transfers of baseline allowances with those allowances disappearing at the phaseout date for the specific HCFC, regardless of what inter-pollutant transfers had taken place." Because EPA has been clear on this point that baseline allowances associated with a specific HCFC—regardless of their current owner or current status—disappear when that HCFC is phased out, the agency continues to believe allowing inter-pollutant baseline transfers only on an annual basis is appropriate.

The commenter objecting to the proposed changes to the transfer regulations cited several issues that EPA should consider. The commenter cites its past practice of annually transferring its HCFC–142b allowances to HCFC-22 and the need to consider the precedent this proposed change might have. The agency notes that prohibiting inter-pollutant baseline transfers in no way precludes the commenter, or any allowance holder, from continuing to make annual inter-pollutant transfers. However, when EPA established the "worst-first" HCFC phaseout, the goal was to encourage companies to move out of HCFCs, not to continually produce or import HCFCs by switching from one chemical to another.

Additionally, the commenter envisions a scenario where an allowance holder could change the focus of its business to produce and sell a substance that does less harm to the environment. While an allowance holder could move to an HCFC that is less harmful to the ozone layer, the switch results in no environmental benefit (excepting the 0.1 percent transfer offset) if all of the transferred allowances are used. Since transfers are weighted based on their ODP, moving from a higher ODP chemical to a lower ODP chemical would result in more allowances for the lower ODP chemical and an equal environmental footprint.

Further, if EPA were to allocate allowances for the next regulatory period taking inter-pollutant transfers into account, those transfers would only affect aggregate company baselines in specific chemicals, not the total amount allocated. In the case of the 2011 Interim Final Rule, when EPA updated baselines to include past inter-pollutant transfers, there was no environmental benefit to doing so. The way EPA allocates allowances relies on the estimate of market servicing need for a chemical and then divides that amount up proportionally based on a company's baseline allowances for that particular chemical (see section IV of this preamble for the detailed description). While taking baseline inter-pollutant transfers into account may have tremendous benefits for the company making the transfers, it does nothing for the environment. As described above, EPA sees this use of inter-pollutant transfers as manipulating the system, and is clarifying that baseline inter-pollutant transfers will not be allowed in the future.

Two commenters state that modifying the baselines by taking into account inter-pollutant transfers is contrary to the CAA. They argue that section 607 of the CAA allows EPA to approve inter-pollutant transfers of allowances only on a year-to-year basis, and point to language in section 607(b) stating that EPA regulations are to permit "a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis." Similar arguments were made in comments submitted on the 2008 Proposed Rule and on the 2011 Interim Final Rule.

EPA does not agree with the comment that the language of section 607(b) is clear on its face. The statutory language is ambiguous, and EPA has discretion to choose a reasonable interpretation of that language. EPA determined in the 2009 Final Rule that section 607(b) is best read as permitting only year-by-year inter-pollutant transfers. EPA continues to believe that this is the best interpretation of the statutory language. Section 607(b) states that EPA's rules are to permit "a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year." This language emphasizes the year-by-year nature of such transactions. No parallel language appears in section 607(c). That section does, however, provide that any inter-pollutant transfers between two or more persons must meet the requirements of section 607(b).

As the Court noted, "the agency is certainly entitled to * * * institute a program that forbids baseline inter-pollutant transfers in the future," (*Arkema* v. *EPA*, 618 F.3d at 9). Hence, EPA concludes that requiring all inter-pollutant transfers to be conducted on a yearly—and thus temporary—basis going forward is the approach most consistent with the wording of section 607(b). Further discussion of the reasons for limiting inter-pollutant transfers to those conducted on a calendar-year basis is available in the Response to Comments for the 2009 Final Rule (included in the docket for this rulemaking).

Consistent with the Court's decision regarding past inter-pollutant transfers (those conducted during the prior regulatory period), the baselines established in this action for 2012–2014 take into account the 2008 inter-pollutant baseline transfers. EPA is clarifying, however, that it has not approved any inter-pollutant transfers of baseline allowances in the current regulatory period, and for the reasons given in the 2009 Final Rule, the 2011 Interim Final Rule, and in this action, in the future, EPA will approve inter-pollutant transfers only on a year-by-year basis. Thus, in the context of the allowance system for protection of stratospheric ozone, companies should

not expect that any future inter-pollutant transfers they conduct will affect their baselines either in the current regulatory period or any future regulatory period.

EPA is revising the regulations to avoid any further dispute about the agency's position on this issue. The new language clarifies that permanent inter-pollutant transfers of baseline allowances will not be approved. In addition, EPA is clarifying that the procedures in section 82.23(a) apply to permanent, single-pollutant transfers.

B. How is EPA changing the regulations governing transfers of Article 5 Class II allowances?

Article 5 allowances for Class II substances are the privileges granted under 40 CFR 82.18(a) to produce the specified HCFC for export only to countries listed in 40 CFR Subpart A, Appendix C, Annex 4. The countries listed in that annex are developing countries whose control obligations under the Montreal Protocol are addressed in Article 5 of the treaty and hence are referred to as "Article 5 Parties." EPA proposed to revise the regulations at 40 CFR 82.23(b) to reflect its previously stated intent to allow inter-pollutant transfers of Article 5 allowances.

EPA promulgated section 82.23 as part of the 2003 Final Rule (68 FR 2820). EPA specifically discussed the inter-pollutant transfer of Article 5 allowances at 68 FR 2834 stating, "For example, after the 2003 phaseout of HCFC–141b and before 2010, a company receiving * * * Article 5 allowances for HCFC–141b could engage in inter-company transfers of those allowances, but not in inter-pollutant transfers [because no other HCFC Article 5 allowances would be available during that period]. In 2010, when * * * Article 5 allowances for HCFC–22 and HCFC–142b become available, these allowances will be transferable with the ones for HCFC–141b." These statements indicate that the agency intended for companies to be able to perform inter-pollutant transfers of Article 5 allowances. The omission of Article 5 allowances from section 82.23(b) appears to have been an oversight. Therefore, EPA proposed to revise the regulations to specifically provide for the inter-pollutant transfers of Article 5 allowances through this rulemaking. As with other types of inter-pollutant transfers, these transfers would be limited in duration to a single year. The agency received two comments on its proposal to revise the text at section 82.23(b), which EPA responds to in the Response to Comments.

EPA also proposed to change the text at 82.23(a)(ii) for consistency with its previously stated policy on offsets for transfers of Article 5 allowances. Section 607(a) requires that transfers of production allowances "will result in greater total reductions in the production in each year of * * * class II substances than would occur in that year in the absence of such transactions." In a November 10, 1994, **Federal Register** notice, EPA stated its interpretation that the section 607 offset requirement applies to Article 5 allowance transfers (59 FR 56287): "Inter-pollutant transfers of Article 5 allowances will continue to require a one percent offset, as required by section 607 of the CAA * * *" In the May 10, 1995, final rule at 60 FR 24980, EPA stated that "[w]ith today's action, EPA permits inter-pollutant and inter-company transfers of Article 5 allowances as proposed* * *" meaning, EPA intended to require an offset for transfers of Article 5 allowances in the class I allowance system.

This intent to require an offset is also reflected in certain provisions of the class II allowance system in 40 CFR part 82. Section 82.23(a)(i)(G) specifically requires an offset for Article 5 allowance inter-company transfers, stating that the transfer claim must set forth: "For trades of consumption allowances, production allowances, export production allowances, or Article 5 allowances, the quantity of the 0.1 percent offset applied to the unweighted quantity traded that will be deducted from the transferor's allowance balance." The offset is also mentioned at section 82.23(a)(iii): "In the case of transfers of * * * Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity (in kilograms) to be converted plus 0.1 percent of that quantity." This contrasts with section 82.23(a)(ii)(A), which states that in the case of Article 5 allowances, "EPA will reduce the transferor's balance of unexpended allowances * * * by the quantity to be transferred," with no mention of an offset. In addition, in the introductory text for 82.23(a)(ii), Article 5 allowances are not mentioned: "The transfer claim is the quantity (in kilograms) to be transferred plus, in the case of transfers of production or consumption allowances, 0.1 percent of that quantity;" EPA proposed to amend 82.23(a)(ii) and 82.23(a)(ii)(A) to require an offset for transfers of Article 5 allowances. EPA did not receive comments on this proposed clarification to the regulatory text, and is finalizing the clarification as proposed. Section 82.23(a) is now consistent throughout. Section 82.23(b) requires an offset of 0.1 percent for all inter-pollutant transfers and since EPA is adding Article 5 allowances to section 82.23(b), an offset will automatically apply.

To reflect EPA's intent to allow inter-pollutant transfers of Article 5 allowances, and the requirement that an offset be deducted when an entity is transferring Article 5 allowances, the agency is finalizing the proposed modifications to the regulatory text at 40 CFR 82.23(a)(ii), 82.23(a)(ii)(A), and 82.23(b).

VI. Statutory and Executive Order Reviews

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

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" since it raises "novel legal or policy issues." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

EPA did not conduct a specific analysis of the benefits and costs associated with this action. Many previous analyses provide a wealth of information on the costs and benefits of the U.S. HCFC phaseout including:

- The 1993 Addendum to the 1992 Phaseout Regulatory Impact Analysis: Accelerating the Phaseout of CFCs, Halons, Methyl Chloroform, Carbon Tetrachloride, and HCFCs.
- The 1999 Report Costs and Benefits of the HCFC Allowance Allocation System.
- The 2000 Memorandum Cost/Benefit Comparison of the HCFC Allowance Allocation System.
- The 2005 Memorandum Recommended Scenarios for HCFC Phaseout Costs Estimation.
- The 2006 ICR Reporting and Recordkeeping Requirements of the HCFC Allowance System.
- The 2007 Memorandum Preliminary Estimates of the Incremental Cost of the HCFC Phaseout in Article 5 Countries.
- The 2007 Memorandum Revised Ozone and Climate Benefits Associated with the 2010 HCFC Production and Consumption Stepwise Reductions and a Ban on HCFC Pre-charged Imports.

• The 2009 ICR Reporting and Recordkeeping Requirements of the HCFC Allowance System.

A memorandum summarizing these analyses is available in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting for HCFCs, and this action does not amend those provisions. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. We have considered the economic impacts of this final rule on small entities. For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This action may affect the following categories:

—Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gases manufacturers and reclaimers;
—Other Chemical and Allied Products Merchant Wholesalers (NAICS code 422690), including chemical gases and compressed gases merchant wholesalers;
—Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing entities (NAICS code 333415), including air-conditioning equipment and commercial and industrial refrigeration equipment manufacturers;
—Air-Conditioning Equipment and Supplies Merchant Wholesalers (NAICS code 423730), including air-conditioning (condensing unit, compressors) merchant wholesalers;
—Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers (NAICS code 423620), including air-conditioning (room units) merchant wholesalers; and
—Plumbing, Heating, and Air-Conditioning Contractors (NAICS code 238220), including central air-conditioning system and commercial refrigeration installation; HVAC contractors.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule relieves a regulatory ban on production and consumption that would otherwise apply in the wake of the Court's vacatur. Additionally, EPA is continuing to allocate production and consumption allowances using the same approach described in the 2009 Final Rule with adjustments to reflect (1) 2008 inter-pollutant transfers of baseline allowances deemed permanent by the Court, (2) inter-company, single-pollutant transfers of baseline allowances that occurred in 2010, (3) changes in company names that occurred after the 2009 Final Rule was signed and (4) an updated picture on the need for virgin HCFC–22 as assessed in the Adjustment Memo and sections IV.B.1–3 of this preamble. EPA is not modifying the recordkeeping or reporting provisions and thus is not increasing the burden to small businesses. EPA's HCFC Phaseout Benefits and Costs Memo, included in this docket, provides a summary of previous small business analyses, as well as the cost and benefit data used for the 2009 Final Rule.

We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. UMRA does not apply to rules that are necessary for the ratification or implementation of international treaty obligations. This rule implements the 2010 milestone for the phase-out of HCFCs under the Montreal Protocol. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action apportions production and consumption allowances and establishes baselines for private entities, not small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action is expected to primarily affect producers, importers, and exporters of HCFCs. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 F.R. 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. The agency

nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects of excessive exposure to UV radiation on children: (1) Westerdahl J, Olsson H, Ingvar C. "At what age do sunburn episodes play a crucial role for the development of malignant melanoma," Eur J Cancer 1994: 30A: 1647–54; (2) Elwood JM Japson J. "Melanoma and sun exposure: an overview of published studies," Int J Cancer 1997; 73:198–203; (3) Armstrong BK, "Melanoma: childhood or lifelong sun exposure," In: Grobb JJ, Stern RS Mackie RM, Weinstock WA, eds. "Epidemiology, causes and prevention of skin diseases," 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. "Melanoma and Sunburn," Cancer Causes Control, 1994: 5:564–72; (5) Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma," Arch Dermatol 1995; 131: 157–63; (7) Armstrong, DK. "How sun exposure causes skin cancer: an epidemiological perspective," Prevention of Skin Cancer. 2004. 89–116.

This action implements the U.S. commitment to reduce the total basket of HCFCs produced and imported to 25 percent of the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions, such as the 1996 Class I phaseout, it is one of the most significant remaining actions the U.S. can take to complete the overall phaseout of ODS and further decrease impacts on children's health from stratospheric ozone depletion.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule issues allowances for the production and consumption of HCFCs.

I. National Technology Transfer and Advancement Act

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

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

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action continues the implementation of the U.S. commitment to reduce the total basket of HCFCs produced and imported to a level that is more than 75 percent below the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions. such as the 1996 Class I phaseout, it is one of the most significant remaining actions the U.S. can take to complete the overall phaseout of ODS and further lessen the adverse human health effects for the entire population.

K. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 3, 2013.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Hydrochlorofluorocarbons, Imports.

Dated: March 27, 2013.

Bob Perciasepe,

Acting Administrator.

40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Amend § 82.16 by revising paragraph (a) to read as follows:

§ 82.16 Phaseout schedule of class II controlled substances.

(a) *Calendar-year allowances.* (1) In each control period as indicated in the following tables, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §§ 82.17 and 82.19:

CALENDAR-YEAR HCFC PRODUCTION ALLOWANCES

Control period	Percent of HCFC–141b	Percent of HCFC–22	Percent of HCFC–142b	Percent of HCFC–123	Percent of HCFC–124	Percent of HCFC–225ca	Percent of HCFC–225cb
2003	0	100	100				
2004	0	100	100				
2005	0	100	100				
2006	0	100	100				
2007	0	100	100				
2008	0	100	100				
2009	0	100	100				
2010	0	41.9	0.47	125	125	125	125
2011	0	32.0	4.9	125	125	125	125
2012	0	17.7	4.9	125	125	125	125
2013	0	30.1	4.9	125	125	125	125
2014	0	26.1	4.9	125	125	125	125

CALENDAR-YEAR HCFC CONSUMPTION ALLOWANCES

Control period	Percent of HCFC–141b	Percent of HCFC–22	Percent of HCFC–142b	Percent of HCFC–123	Percent of HCFC–124	Percent of HCFC–225ca	Percent of HCFC–225cb
2003	0	100	100				
2004	0	100	100				
2005	0	100	100				
2006	0	100	100				
2007	0	100	100				
2008	0	100	100				
2009	0	100	100				
2010	0	41.9	0.47	125	125	125	125
2011	0	32.0	4.9	125	125	125	125
2012	0	17.7	4.9	125	125	125	125
2013	0	18.0	4.9	125	125	125	125
2014	0	14.2	4.9	125	125	125	125

(2) *Recoupment allowances.* In the control period beginning January 1, 2013 and ending December 31, 2013, and again in the control period beginning January 1, 2014 and ending December 31, 2014, certain companies are granted HCFC consumption and production allowances in addition to the percentage of baseline listed in the table at paragraph (a)(1) of this section. The following companies will receive the amounts listed below in both 2013 and 2014: 2,374,846 kg of HCFC–22 consumption allowances and 2,305,924 kg of HCFC–22 production allowances to Arkema; 1,170 kg of HCFC–142b consumption allowances to DuPont; 29,146 kg of HCFC–142b consumption allowances and 53,549 kg of HCFC–142b production allowances to Honeywell; 578,948 kg of HCFC–22 consumption allowances to Solvay Fluorides; and 144,900 kg of HCFC–142b production allowances to Solvay Solexis.

* * * * *

■ 3. Amend § 82.23 by revising paragraphs (a)(ii) introductory text, (a)(ii)(A), (b)(1), and (d) to read as follows:

§ 82.23 Transfers of allowances of class II controlled substances.

(a) * * * (ii) The Administrator will determine whether the records maintained by EPA indicate that the transferor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed. The transfer claim is the quantity (in kilograms) to be transferred plus 0.1 percent of that quantity. The Administrator will take into account any previous transfers, any production, and allowable imports and exports of class II controlled substances reported by the transferor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows: (A) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances, respectively, by the quantity to be transferred plus 0.1 percent of that quantity. The transferor and the transferee may proceed with the transfer when EPA issues a no objection notice. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

* * * * *

(b) * * * (1) Effective January 1, 2003, a person (transferor) may convert consumption allowances, production allowances or Article 5 allowances for one class II controlled substance to the same type of allowance for another class II controlled substance listed in Appendix B of this subpart, following the procedures described in paragraph (b)(3) of this section.

* * * * *

(d) *Permanent transfers.* The procedures in paragraph (a) of this section apply to permanent inter-company transfers of baseline

production allowances or baseline consumption allowances. A person receiving a permanent transfer of baseline production allowances or baseline consumption allowances (the transferee) for a specific class II controlled substance will be the person who has their baseline allowances adjusted in accordance with phaseout schedules in this subpart. No person may conduct permanent inter-pollutant transfers of baseline production allowances or baseline consumption allowances.

[FR Doc. 2013–07758 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0057; FRL–9381–2]

Castor Oil, Polymer With Adipic Acid, Linoleic Acid, Oleic Acid and Ricinoleic Acid; 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 castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid (CAS Reg. No. 1357486–09–9) when used as an inert ingredient in a pesticide formulation. Advance Polymer Technology 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 castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid on food or feed commodities.

DATES: This regulation is effective April 3, 2013. Objections and requests for hearings must be received on or before June 3, 2013, 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: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0057, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: David Lieu, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–0079; email address: *lieu.david@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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–2013–0057 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 June 3, 2013. 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 (excluding any Confidential Business Information (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 the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0057, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of February 15, 2013 (78 FR 11126) (FRL–9378–4), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 2E8040) filed by Advance Polymer Technology, 109 Conica Lane, P.O. Box 160, Harmony, PA 16037. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid; CAS Reg. No. 1357486–09–9. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency received 1 comment.

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). Castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid 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.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as specified in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets, as required, the following exemption criteria specified in 40 CFR 723.250(e); The polymer's number average MW of 3,500 daltons is greater than 1,000 daltons, and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 daltons, and less than 25% oligomeric material below MW 1,000 daltons, and the polymer does not contain any reactive functional groups.

Thus, castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid 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 castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid 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 castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid is 3,500 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid 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 castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid to share a common mechanism of toxicity with any other substances, and castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid 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 castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid, 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 castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid.

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 United Nations 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 castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid.

C. Response to Comments

The one comment received was from a private citizen who opposed the idea of raising tolerances for pesticide residues on products which are fed to humans. The Agency understands the commenter's concern and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the FFDCA EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

IX. Conclusion

Accordingly, EPA finds that exempting residues of castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from tolerance under FFDCA section 408(d) 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) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the 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, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). 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) (2 U.S.C. 1501 *et seq.*).

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

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action 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: March 26, 2013.

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, add alphabetically the following polymer to the table to read as follows:

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

* * * * *

Polymer	CAS No.
* * * * *	
Castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid, minimum number average molecular weight (in amu), 3,500	1357486–09–9
* * * * *	

[FR Doc. 2013–07645 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0043; FRL–9380–5]

Styrene-Ethylene-Propylene Block Copolymer; 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 styrene-ethylene-propylene block copolymer (CAS Reg. No. 108388–87–0) when used as an inert ingredient in a pesticide formulation. AgroFresh 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 styrene-ethylene-propylene block copolymer on food or feed commodities.

DATES: This regulation is effective April 3, 2013. Objections and requests for hearings must be received on or before June 3, 2013, 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: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0043, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: David Lieu, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–0079; email address: *lieu.david@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. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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–2013–0043 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 June 3, 2013. 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 (excluding any Confidential Business Information (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 the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0043, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of February 15, 2013 (78 FR 11126) (FRL–9378–4), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10540) filed by AgroFresh Inc., 100 Independence Mall West, Philadelphia, PA 19105. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of styrene-ethylene-propylene block copolymer (CAS Reg. No. 108388–87–0). The document 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). Styrene-ethylene-propylene block copolymer 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.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3– or longer chain length as specified in 40 CFR 723.250(d)(6).

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

8. The polymer's number average MW of 125,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, styrene-ethylene-propylene block copolymer 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 styrene-ethylene-propylene block copolymer.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that styrene-ethylene-propylene block copolymer 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 styrene-ethylene-propylene block copolymer is 125,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since styrene-ethylene-propylene block copolymer conforms 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 styrene-ethylene-propylene block copolymer to share a common mechanism of toxicity with any other substances, and styrene-ethylene-propylene block copolymer does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that styrene-ethylene-propylene block copolymer 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 styrene-ethylene-propylene block copolymer, 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 styrene-ethylene-propylene block copolymer.

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 United Nations 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 styrene-ethylene-propylene block copolymer.

IX. Conclusion

Accordingly, EPA finds that exempting residues of styrene-ethylene-propylene block copolymer from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) 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) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), 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 FFDCA section 408(n)(4). 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) (2 U.S.C. 1501 *et seq.*).

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

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action 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: March 26, 2013.

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, alphabetically add the following polymer to the table to read as follows:

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

* * * * *

Polymer	CAS No.
* * * * *	
Styrene-ethylene-propylene block copolymer, minimum number average molecular weight (in amu), 125,000 ..	108388–87–0
* * * * *	

[FR Doc. 2013–07642 Filed 4–2–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R10–RCRA–2013–0105; FRL–9796–6]

Adequacy of Oregon Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a modification to the State of Oregon's approved Municipal Solid Waste Landfill (MSWLF) permit program. The approved modification allows the State to issue Research, Development, and Demonstration (RD&D) Permits to owners and operators of MSWLF units in accordance with its State law. On March 22, 2004, the EPA issued final regulations allowing RD&D Permits to be issued to certain municipal solid waste landfills by approved states. On June 14, 2012, Oregon submitted an application to EPA Region 10 seeking Federal approval of its RD&D Permit requirements. After thorough review, EPA Region 10 is determining that Oregon's RD&D Permit requirements are adequate through this direct final action.

DATES: This direct final rule will become effective June 3, 2013 without further notice unless the EPA receives written adverse comments on or before May 3, 2013. If written adverse comments are received, the EPA will review the comments and publish another **Federal Register** document responding to the comments and either affirming or revising the initial decision.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2013–0105, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: calabro.domenic@epa.gov*
- *Fax:* (206) 553–8509, to the attention of Domenic Calabro.
- *Mail:* Domenic Calabro, Office of Air, Waste and Toxics, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AWT–122, Seattle, WA 98101.
- *Hand Delivery or Courier:* Deliver your comments to Domenic Calabro, Office of Air, Waste and Toxics, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AWT–122, Seattle, WA 98101. Such deliveries are only accepted during the Office's normal hours of operation.

Instructions: Identify your comments as relating to Docket ID No. EPA–R10–RCRA–2013–0105. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/*.

Docket: EPA has established a docket for this action under Docket ID No. EPA–R10–RCRA–2013–0105. All documents in the docket are listed on the *www.regulations.gov* Web site. Although it may be listed in the index, some information might not be publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the U.S. Region 10 Library, 1200 Sixth Avenue, Seattle, Washington by appointment only; please telephone (206) 553–1289 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Domenic Calabro, Office of Air, Waste and Toxics, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AWT–122, Seattle, WA 98101, (206) 553–6640, *calabro.domenic@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 22, 2004, the EPA issued a final rule amending the Municipal Solid Waste Landfill (MSWLF) criteria in 40 CFR part 258 to allow Research, Development, and Demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are available only in states with approved MSWLF permit programs that have been modified to incorporate RD&D permit authority. The purpose of the rule is to stimulate the development of new technologies and alternative operational processes for the landfilling of municipal solid waste.

RD&D permits may provide variances from existing requirements for run-on control systems, liquid restrictions, and final cover requirements. There is no authority for variance of criteria for groundwater monitoring, closure and post-closure requirements (except alternative cover provisions), or financial assurance requirements. To issue an RD&D permit allowing variances from any of these criteria, the director of an approved state must be satisfied that a landfill operating under an RD&D permit will pose no additional risk to human health and the environment beyond that which would result from a landfill operating under the full MSWLF criteria.

While states are not required to seek approval to allow permits under this new provision, those states interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from the EPA before issuing such permits. Approval procedures for the new provisions of 40 CFR part 258 are outlined in 40 CFR § 239.12.

On October 7, 1993, EPA published a final rule (58 FR 193) approving the State of Oregon's MSWLF permit program. On June 14, 2012, Oregon Department of Environmental Quality (ODEQ) applied for approval of its RD&D permit provisions, codified at ORS 459.245(4). In addition, Oregon has a state flexibility rule (OAR 340–094–0020) which allows the Director of the ODEQ or a designee to approve an alternative schedule, procedure, or design as long as that alternative is at least as protective of the environment as the provisions in 40 CFR part 258 and

a guidance document titled, "Guidance for Obtaining a Department RD&D Permit."

Oregon Assistant Attorney General, Gary L. Vrooman, certified in a letter dated August 24, 2012 that the information filed with ODEQ as part of an MSWLF permit modification application is effectively an RD&D plan and that this plan, when approved by ODEQ, becomes an enforceable part of the permit. Assistant Attorney General Vrooman additionally certified that the Oregon solid waste rules and guidance were effective at the time of the certification.

II. Decision

After a thorough review the EPA, Region 10, has determined that the Oregon RD&D permit provisions as set out in ORS 459.245(4) and OAR 340–094–0020, combined with the ODEQ guidance document titled "Guidance for Obtaining a Department RD&D Permit", comply with the Federal criteria, as set forth in 40 CFR 258.4.

III. Statutory and Executive Order Reviews

This action approves State solid waste requirements pursuant to Resource Conversation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Significant Regulatory Action

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

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This direct final rule does not establish or modify any information or recordkeeping requirements for the regulated community. The EPA has determined that this action is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601, et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this direct final rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA has determined that this direct final action will not have a significant impact on small entities because the action will only have the effect of modifying pre-existing authorized requirements under State law. I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. This action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the EPA has determined that the requirements of section 203 of the UMRA do not apply to this action.

5. Executive Order 13132: Federalism

This action addresses a modification to Oregon's approved municipal solid waste landfill (MSWLF) permit program, which has been modified by State law to incorporate RD&D permitting authority. There are no substantial direct effects on the States, on the relationship between Federal and State governments, or on the distribution of power between or among the various levels of government, as specified in Executive Order 13132. Therefore, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175. This action addresses a modification to Oregon's approved municipal solid waste landfill (MSWLF) permit program, which has been modified by State law to incorporate RD&D permitting authority. Thus, the EPA has determined that Executive Order 13175 does not apply to this rule.

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

This action is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks.

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

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

9. National Technology Transfer and Advancement Act

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) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA has determined that this action does not involve "technical standards" as defined by the NTTAA. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their

mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses a modification to Oregon's approved municipal solid waste landfill (MSWLF) permit program, which has been modified by State law to incorporate RD&D permitting authority. EPA has determined that the action is not subject to Executive Order 12898.

11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, et seq., as amended 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. The EPA will submit a report containing this document 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 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). This action will be effective June 3, 2013.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2013–07782 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121009528–2729–02]

RIN 0648–XC542

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2013 commercial summer flounder quota to the Commonwealth of Virginia and to the State of New Jersey. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

DATES: Effective March 29, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 657,477 lb (298,227 kg) of its 2013 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in Virginia due to hazardous shoaling, from February 1, 2013, to February 28, 2013, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. North Carolina has also agreed to transfer 47,034 lb (21,334 kg) of its 2013 commercial quota to New Jersey. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in New Jersey between February 8, 2013, and February 19, 2013, thereby requiring a quota transfer to account for an increase in New Jersey's landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder quotas for calendar year 2013 are: North Carolina, 988,221 lb (448,249 kg); Virginia, 4,506,299 lb (2,044,023 kg); and New Jersey, 1,960,337 lb (889,192 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: March 29, 2013.

Kara Meckley,

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

[FR Doc. 2013–07749 Filed 3–29–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC606

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2013 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 30, 2013,

through 1200 hours, A.l.t., August 25, 2013.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

The B season allowance of the 2013 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 4,292 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the B season pollock allowance by 858 mt to reflect the under harvest of the A seasonal apportionment in Statistical Area 610. Therefore, the revised B season allowance of the pollock TAC in Statistical Area 610 is 5,150 mt (4,292 mt plus 858 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2013 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,950 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 28, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 29. 2013.

Kara Meckley,

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

[FR Doc. 2013–07743 Filed 3–29–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 64
Wednesday, April 3, 2013

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

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4001, 4043, 4204, 4206, and 4231

RIN 1212–AB06

Reportable Events and Certain Other Notification Requirements

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: Under ERISA, pension plans and the companies that sponsor them are required to report to PBGC a range of corporate and plan events. In 2009, PBGC proposed to increase reporting requirements by eliminating most reporting waivers. Plan sponsors and pension practitioners objected, saying that PBGC would have required reports where the actual risk to plans and PBGC is minimal. On reflection, PBGC agrees. This new proposal exempts most companies and plans from many reports, and targets requirements to the minority of companies and plans that are at substantial risk of default.

PBGC developed a revised proposal under the auspices of Presidential Executive Order 13563, which directs agencies to review and revise existing regulations. Under the new proposal, reporting would be waived for most events currently covered by funding-based waivers if a plan or its sponsor comes within a financial soundness safe harbor based on widely available measures already used in business. Waivers for small plans would be expanded and some other existing waiver provisions would be retained with modifications; other waivers would be eliminated.

In this way, PBGC can reduce unnecessary reporting requirements, while at the same time target its resources to plans that are at risk. The revised proposal will exempt more than 90 percent of plans and sponsors from many reporting requirements. Reporting requirements would also be made simpler and more uniform.

PBGC will also provide for more open and extensive public comment on the proposed rule.

DATES: Comments must be submitted on or before June 3, 2013. A public hearing will be held on June 18, 2013. Outlines of topics to be discussed at the hearing must be submitted on or before June 4, 2013. See Public Participation below for more information on the hearing.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212–AB06, may be submitted by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
- Email: *reg.comments@pbgc.gov*.
- Fax: 202–326–4224.
- Mail or Hand Delivery: Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212–AB06). Comments received, including personal information provided, will be posted to *www.pbgc.gov*. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

Outlines of topics to be discussed at the public hearing on this rule must be submitted by email to *regs.comments@pbgc.gov* or by mail or courier to Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. See Public Participation below for more information on the hearing.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Assistant General Counsel (*Klion.Catherine@PBGC.gov*), Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Executive Summary—Purpose of the Regulatory Action

This rule is needed to conform PBGC's reportable events regulation to changes in the law, to avoid unnecessary reporting requirements, to make reporting more efficient and effective, and as a result help preserve retirement plans. It does these things by amending the regulation to track new legal rules, to change the scope of some reportable events, and to replace the existing waiver structure with a new structure including "safe harbors" that relieves reporting burdens on companies and plans where there is little risk to pensions.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4043 of ERISA, which gives PBGC authority to define reportable events and waive reporting.

Executive Summary—Major Provisions of the Regulatory Action

Changing the Waiver Structure

Under the current waiver structure for reportable events, PBGC often doesn't get reports it needs; at the same time, it gets many reports it doesn't need—reports that are unnecessary. This mismatch occurs because the current waiver structure isn't well-tied to the actual risks and causes of plan terminations.

When a reporting waiver keeps PBGC from learning of a reportable event that presents a high level of risk to a plan, its participants, and the pension insurance system, PBGC loses the opportunity to take protective action. That action might include steps such as involuntary plan termination or negotiation with the plan sponsor to improve plan funding.

But when there is no waiver for a low-risk event, the reporting burden of the plan or sponsor involved outweighs the usefulness of the report to PBGC.

In both these cases, the result is to reduce retirement security. In the former case, PBGC is unable to step in to support plan benefits in a timely way, either because a plan may have been terminated that could otherwise have been preserved, or because an

involuntary termination occurred after exposure had increased unreasonably. In the latter case, the unnecessary reporting burden may lead some firms to reconsider their decision to sponsor defined-benefit pension plans.

The most significant provision of this rule is to propose a blueprint for a new reportable events waiver structure that is more closely focused on risk than the current waiver structure. Some waivers that poorly identify risky situations—like those based on an apparently modest level of plan underfunding—would be eliminated; at the same time, new "safe harbors" would be established—based on financial soundness—that are better measures of low plan risk.

Conforming to Changes in the Law

The Pension Protection Act of 2006 (PPA 2006) made changes in the law that affect the test for whether advance reporting of certain reportable events is required. The test is based on the variable-rate premium rules, which PPA 2006 changed. This rule would conform the advance reporting test to the new legal requirements.

Revision of Definitions of Reportable Events

The rule would simplify the descriptions of several reportable events and make some event descriptions narrower so that compliance is easier and less burdensome. One event would be broadened in scope, and clarification of another event would have a similar result. These changes, like the waiver changes, are aimed at tying reporting burden to risk.

Mandatory E-Filing

The rule would make electronic filing of reportable events notices mandatory. This would further PBGC's ongoing implementation of the Government Paperwork Elimination Act. E-filing is more efficient for both filers and PBGC and has become the norm for PBGC's regulated community.

Introduction

On January 18, 2011, the President issued Executive Order 13563 on Improving Regulation and Regulatory Review, directing agencies to review and improve their regulatory processes. In the spirit of Executive Order 13563 and in light of the comments received on its 2009 proposal, PBGC reexamined the reportable events regulation and the proposed amendment with several factors in mind:

- Commenters said that under the 2009 proposal, many companies would have been required to report to PBGC on non-pension-focused activities in circumstances where those activities were unlikely to affect their pension plans.[1] To avoid such a result, PBGC has sought ways to establish safe harbors that waive reporting requirements in such circumstances.
- Since the reportable events program was legislated almost four decades ago, a vast quantity of business and financial information has become available through the internet and other means. As a result, PBGC can require less direct reporting from its insured plans and their sponsors.
- When reporting to PBGC is necessary, to the extent practicable PBGC can and should rely on procedures, documents, and performance standards that are already established and accepted. In short, PBGC is trying not to "reinvent the wheel," nor does PBGC want to require insured plans and the companies that sponsor them to do so.

Establishing Financial Soundness Safe Harbors

PBGC proposes to establish safe harbors to enable financially sound businesses and plans to avoid having to report many events, particularly those events that seem to have little chance of threatening pension plans.

- *Establishing Financial Soundness for Companies.* A business would be in the safe harbor if it has adequate capacity to meet its obligations in full and on time, as evidenced by meeting five criteria, including passing a "credit report" test and four other criteria designed to measure various aspects of financial soundness. The credit report test would require that the business have a credit report score from a commercial credit reporting company that is commonly used in the business community and that the score indicate a low likelihood that the company would default on its obligations. (The vast majority of plan sponsors already have credit report scores.) The other criteria would be that the business have: (a) Positive net income, (b) no secured debt (with some exceptions, such as purchase-money mortgages and leases), (c) no loan defaults or similar issues, and (d) no missed pension plan contributions (again, with some exceptions). For those in the safe harbor, no post-event reporting would be required for most events to which funding-based waivers currently apply.[2]
- *Establishing Financial Soundness via Plans.* A plan would be in the safe harbor if it were either fully funded on a termination basis or 120 percent funded on a premium basis.[3]

The proposal would also generally provide more small-plan waivers and preserve foreign-entity and *de minimis* waivers but eliminate most other waivers.

In addition, PBGC proposes to simplify reporting rules, to make them more uniform, and where possible to permit submission of information already prepared by plans and companies for other purposes.

Impact of Proposal

Overall, PBGC expects the proposal to exempt or waive more than 90 percent of plans and sponsors from many reporting requirements. The proposal will reduce the burden on the vast majority of companies (estimated at approximately three-fourths) that are financially sound. This reduction may make them less likely to eliminate their defined benefit plans and thereby have a beneficial effect on retirement security generally. In addition, the expansion of small plan waivers could help retention of small plans (which represent about two-thirds of all plans).

Burden on plan sponsors with *de minimis* components in their controlled groups will be reduced because the inclusion of additional *de minimis* waivers for certain events will reduce both reporting and the need to monitor for reportable events to which waivers apply.

Some reportable events present little or no risk to the pension insurance system—where, for example, the plan sponsor is financially sound and the risk of plan termination low. Reports of such events are unnecessary in the sense that PBGC typically reviews but takes no action on them. Based on an analysis of 2011 data, PBGC found that

[1] Among the many comments received on this point: "* * *in many situations in which reporting would be required—the reportable event would not create any meaningful risk that the employer would be unable to meet its plan funding obligations." *ERISA Industry Committee* comment letter, accessible on PBGC's Web site (*www.PBGC.gov*).

[2] Most reporting requirements under the reportable events regulation call for post-event reports, but in some cases advance reporting is required. The new proposal would conform the advance reporting threshold test to changes in the law and eliminate certain extensions of the time to file (see *Advance-Notice Extensions* below), but would make other changes to advance-notice provisions only where they refer to post-event notice provisions that would be changed. Except as otherwise noted, this preamble discusses post-event reporting only.

[3] The current regulation provides a waiver in some circumstances based on 80 percent funding on a premium basis. However, in PBGC's experience, that test is inadequate, in that many plans that have undergone distress or involuntary termination nonetheless have been 80 percent funded on a premium basis. See *Financial Soundness Safe Harbor for Plans* below.

the proportion of such unnecessary filings would be cut by 88 percent under the proposed regulation.[4] The total number of filings under the proposed rule would be comparable to those under the present regulation, but they would be much reduced compared to the 2009 proposal, and the proportion of unnecessary reports, and the regulatory burden on financially sound sponsors and plans, would be dramatically reduced. Fewer unnecessary reports means a more efficient reporting system and a greater proportion of filings that present the opportunity for increased plan protection through monitoring and possible intervention in transactions based on risk, leading to better protection for the pension insurance system and retirement security generally.

If PBGC gets a reportable event notice, it can intervene earlier in the process. Using data from 2011, PBGC has estimated the benefit of better targeted reporting under the new proposal in terms of the value of early intervention as a creditor where a reportable event may foreshadow sponsor default. Early intervention as a creditor leads to higher recoveries of plan underfunding. PBGC estimates that the value of early intervention would exceed the dollar equivalent of the increased burden associated with the higher rate of targeted reporting by approximately $3.8 million.

The methodology of these studies is discussed in more detail under *Executive Order 12866 "Regulatory Planning and Review" and Executive Order 13563 "Improving Regulation and Regulatory Review"* at the end of this preamble.

The new proposal is described in more detail below.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under section 4007 of ERISA, pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA establishes the premium rates and includes provisions for determining the variable-rate premium (VRP), which is based on plan funding rules. PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) implement the premium rules. A number of other provisions of ERISA, and of PBGC's other regulations, refer to funding and premium rules. Thus, any change in the funding and premium rules may require corresponding changes in other PBGC regulations.

Reportable Events

One such regulation is PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043), implementing section 4043 of ERISA, which requires that PBGC be notified of the occurrence of certain "reportable events." Reportable events include such plan events as missed contributions, insufficient funds, and large pay-outs and such sponsor events as loan defaults and controlled group changes. Like section 4043, the reportable events regulation generally requires post-event reporting, but also calls for advance reporting for non-public companies where plan underfunding is large. The threshold test for advance reporting measures underfunding by reference to VRP quantities (in particular, the values of assets and vested benefits as determined for VRP purposes).

The Pension Protection Act of 2006 (PPA 2006) changed the plan funding rules in Title I of ERISA and in the Internal Revenue Code of 1986 (Code) and amended the VRP provisions of section 4006 of ERISA to conform to the changes in the funding rules. PBGC amended its premium rates regulation and its premium payment regulation accordingly, effective for plan years beginning after 2007. Since underfunding for purposes of reportable events was measured by reference to the VRP, the thresholds for reportable events also had to be modified. Pending the adoption of conforming amendments to the reportable events regulation, PBGC has issued a series of Technical Updates providing transitional guidance on how the PPA 2006 changes affect compliance with the reportable events requirements.[5]

2009 Proposed Rule

On November 23, 2009 (at 74 FR 61248), PBGC published in the **Federal Register** for notice and comment a proposed rule providing for amendment of PBGC's reportable events regulation to make the advance reporting threshold test consistent with the PPA 2006 funding rules and PBGC's new variable-rate premium rules. The rule also proposed to eliminate most automatic waivers and filing extensions, create two new reportable events based on provisions in PPA 2006, and make other changes to the reportable events regulation. It also provided for amendment of five other PBGC regulations to revise statutory cross-references and otherwise accommodate the statutory and regulatory changes in the premium rules.

PBGC received comments on the proposed rule from eleven commenters—actuaries, pension consultants, and organizations representing employers and pension professionals. In general, the commenters considered the proposal unduly burdensome, primarily because of the elimination of most reportable event waivers. Several commenters urged PBGC to rethink and repropose the rule to address issues raised by the comments.

Executive Order 13563

On January 18, 2011, the President issued Executive Order 13563 on Improving Regulation and Regulatory Review (76 FR 3821, January 21, 2011). Executive Order 13563 encourages identification and use of innovative tools to achieve regulatory ends, calls for streamlining existing regulations, and reemphasizes the goal of balancing regulatory benefits with burdens on the public.

Executive Order 13563 also requires agencies to develop a plan to review existing regulations to identify any that can be made more effective or less burdensome in achieving regulatory objectives. On April 1, 2011 (at 76 FR 18134), PBGC published a request for public comments on developing its preliminary review plan. The five responses to this comment request (all from commenters on the 2009 proposal) included comments on the 2009 proposed rule (largely reflective of those submitted previously) as well as comments on the existing regulation.

[4] To 5 percent under the proposal compared to 42 percent under the present regulation.

[5] On November 28, 2007, PBGC issued Technical Update 07–2, providing transitional guidance on the applicability of the changes made by PPA 2006, and the corresponding changes proposed for PBGC premium regulations, to the determination of funding-related amounts for purposes of the reportable events regulation. On March 24, 2008, PBGC issued Technical Update 08–2, providing a waiver for reporting of missed quarterly contributions by certain small employers in 2008. On January 9, 2009, PBGC issued Technical Update 09–1, providing interim guidance on compliance with reportable events requirements for plan years beginning in 2009. On April 30, 2009, PBGC issued Technical Update 09–3, providing a waiver or alternative compliance method (depending on plan size) for reporting of missed quarterly contributions by certain small employers in 2009. On November 23, 2009, PBGC issued Technical Update 09–4, extending the guidance in Technical Updates 09–1 and 09–3 for 2010. On December 3, 2010, PBGC issued Technical Update 10–4, extending the guidance in Technical Update 09–4 for 2011. On December 7, 2011, PBGC issued Technical Update 11–1, extending the guidance in Technical Update 10–4 for 2012. Technical Updates are available on PBGC's Web site, *www.pbgc.gov*.

New Proposal

PBGC has reconsidered the reportable events regulation and the 2009 proposed amendment in the spirit of Executive Order 13563 and in light of the comments. In addition to conforming the reportable events regulation to PPA 2006's changes to the funding and premium rules, this new proposal includes significant changes to address issues under the regulation in a new way and to reduce burden in areas where that can be done without unduly compromising the objectives of section 4043.

In particular, the proposal features the introduction of a newly conceived "safe harbor" from reporting in response to comments suggesting that PBGC reduce reporting where risk to the pension insurance system is low. This safe harbor, applicable to five reportable events, would be based on employer financial soundness (*i.e.*, an employer's capacity to meet its financial commitments in full and on time) as determined through credit report scores and the satisfaction of related criteria. A second safe harbor would be available for plans that could meet one of two funding tests that would be more stringent than those currently provided for existing funding-based waivers. The new proposed rule would also preserve or extend some waivers under the existing regulation that the 2009 proposal would have eliminated.

Under this approach, PBGC would rely more heavily on publicly available sources of information, including information publicly reported to other agencies, to learn about reportable events. As a result, it might take longer for PBGC to learn of some reportable events, but PBGC believes the approach would provide a better balance between the agency's need for information and sponsors' interest in minimizing regulatory burdens on the conduct of their business.

Public comments and regulatory changes (from both the existing regulation and the 2009 proposal) are discussed below in the context of the provisions they relate to.

Reportable Events

PBGC proposes to amend the reportable events regulation to accommodate the changes to the funding and premium rules; to replace many automatic waivers with a new and simpler system of waivers featuring "safe harbors" for five events based on plan sponsors' financial soundness and on high levels of plan funding; and to make other modifications.

Reports required by section 4043 of ERISA tell PBGC about events that may presage distress termination of plans or require PBGC to monitor or involuntarily terminate plans. These important reporting requirements are designed to protect participants and PBGC. When PBGC has timely information about a reportable event, it can take steps to encourage plan continuation—for example, by exploring alternative funding options with the plan sponsor—or, if plan termination is called for, to minimize the plan's potential funding shortfall through involuntary termination and maximize recovery of the shortfall from all possible sources. Without timely information about a reportable event, PBGC typically learns that a plan is in danger only when most opportunities for protecting participants and the pension insurance system may have been lost. But while such information can be critical to the protection of the pension insurance system, the circumstances surrounding some events may make reporting unnecessary. Thus, the regulation includes a system of waivers and extensions to ease reporting burdens in certain cases.

Automatic Waivers and Extensions—Overview

Section 4043.4 of the reportable events regulation provides that PBGC may grant waivers and extensions case by case. In addition, the existing regulation provides automatic waivers and extensions for most of the reportable events. For example, waivers are provided in some cases for small plans, for plans that meet certain funding tests, or for events affecting *de minimis* segments of controlled groups or foreign entities. In cases where it may be impossible to know by the filing due date whether criteria for a particular waiver are met, an extension gives a potential filer an opportunity to determine whether the waiver applies.

PBGC proposes to replace many of these automatic waivers with a new and simpler system, including many of the automatic waivers currently available and featuring new automatic waivers that would apply where a sponsor or plan comes within a financial soundness safe harbor.[6] The proposal would retain the complete waivers provided for certain statutory events—in §§ 4043.21 (disqualification or noncompliance), 4043.22 (amendment decreasing benefits), 4043.24 (termination), and 4043.28 (merger, consolidation, or transfer)—that have been replaced by events defined in the regulation. PBGC also proposes to eliminate the automatic extensions under the existing regulation. These extensions are currently needed because many existing waivers are based on facts that may not be known when an event occurs. Since waivers of this kind are being replaced, related extensions are no longer needed.[7]

To give plans and sponsors time to institute any necessary event-monitoring programs and otherwise adjust to changes in the regulation, PBGC is proposing to defer the applicability date of the final rule.

PBGC's experience indicates that many of the automatic waivers and extensions in the existing reportable events regulation are depriving it of early alerts that would enable it to mitigate distress situations. For example, the 2009 proposed rule noted that of the 88 small plans terminated in 2007, 21 involved situations where, but for an automatic waiver, an active participant reduction reportable event notice would have been required an average of three years before termination. Had those notices been filed, the need for some of those terminations might have been avoided, and PBGC might have been able to reduce the impact of other terminations on the pension insurance system.[8] Concerns of this kind led PBGC in 2009 to propose the elimination of most automatic waivers in the reportable events regulation.

The commenters uniformly opposed the proposal to eliminate most waivers. Commenters said that the increase in the public's burden of compliance would outweigh the benefit to the pension insurance system of the

[6] See Summary Chart, below, for an overview of waivers and safe harbors under the current regulation, the 2009 proposal, and this proposed rule.

[7] The proposed rule would provide extensions for small plans to determine whether they satisfied the plan financial safe harbor test based on plan funding on a premium basis. There would also be an extension to provide plans time to determine whether the year-end active participant count showed that an active participant reduction event had occurred by attrition at the end of the year.

[8] Examples of the value of early alerts in mitigating distress situations can also be found in other PBGC programs. For example, as part of its Early Warning Program, PBGC negotiated substantial protections from Daimler AG for the pension plans of Daimler's former Chrysler North America division, and the Chrysler plans remain ongoing today. In another case, PBGC negotiated substantial protections under ERISA section 4062(e) for a plan sponsored by Visteon Corporation. When the company filed for Chapter 11 protection in 2009, the company initially contemplated terminating three of its four pension plans, and shifting the obligations to the PBGC's insurance program, which would have caused $100 million in benefit reductions for the company's 22,000 workers and retirees and added more than $500 million to the PBGC's shortfall. However, due in part to the negotiated protections, all of the company's pension plans remain ongoing today.

additional reporting. They averred that the circumstances in which existing waivers apply pose little risk to PBGC and expressed concern that the proposed changes to the rule would discourage employers from continuing to maintain pension plans covered by Title IV.

In response to the comments, PBGC has attempted to identify circumstances that appear less likely to call for involuntary plan termination and is now proposing a new set of automatic waivers more appropriately tailored to focus on such situations. In particular, PBGC proposes to create safe harbors based on sponsor and plan financial soundness. These safe harbors would apply to post-event reporting requirements for the events of active participant reduction, distribution to a substantial owner, controlled group change, extraordinary dividend, and transfer of benefit liabilities—all the reportable events to which a funding-based waiver applies under the existing regulation, except liquidation and loan default. PBGC feels that the occurrence of one of these latter two events is at odds with the premise of financial soundness underlying the safe harbor and portends likely deterioration in plan funding due to missed contributions. (As discussed below, this consideration would not apply if the event qualified for a foreign-entity or *de minimis* waiver.)

Financial Soundness Safe Harbor for Plan Sponsors

Many commenters on the 2009 proposal contended that if funding-based waivers were eliminated, plans and plan sponsors would be required to report events posing minimal risk to PBGC and the pension insurance system. To address the issue of risk, PBGC proposes to provide a risk-based "safe harbor." PBGC is open to suggestions from the public to help identify existing, widely accepted standards that could form the basis for such a safe harbor. Pending such suggestions, PBGC is proposing, as discussed below, to base the safe harbor on the adequate capacity of an employer to meet its financial commitments in full and on time based on a combination of five factors, including a standard of financial strength reflected by commercial credit report scores and four confirmatory standards.

The new safe harbor would generally apply if, when a reportable event occurred for a plan, the applicable financial soundness criteria were met by the plan's contributing sponsor[9] or (where the contributing sponsor was a member of a controlled group) by the contributing sponsor's highest U.S. parent in the controlled group (that is, the highest level U.S. company in the group that was in the contributing sponsor's chain of ownership). For a change in contributing sponsor, the criteria would be applied to the post-transaction sponsor group; for a transfer of benefit liabilities, the criteria would be applied to both the transferor and the surviving transferee plans' sponsor groups. The regulation would refer to an entity that satisfied the applicable criteria as "financially sound."

Focusing on the financial soundness of the plan sponsor (rather than just the funding level of the plan) is consistent with section 4041 of ERISA, which permits distress termination of underfunded pension plans only in situations where plan sponsors are in bankruptcy or severe financial straits. This safe harbor proposal reflects PBGC's experience that the financial soundness of a plan sponsor generally correlates inversely with the risk of an underfunded termination of the sponsor's pension plan. One major component of the risk of underfunded termination is the likelihood that the plan sponsor will, within the near future, fall into one of the "distress" categories in section 4041(c)(2)(B) of ERISA (liquidation, reorganization, or inability to pay debts or support the plan). Another is that the sponsor will go out of business, abandoning the plan and forcing PBGC to terminate it under section 4042 of ERISA. Thus, the risk of underfunded termination of a plan within the near future depends most significantly on the plan sponsor's financial strength.[10]

In particular, PBGC believes the ability of a sponsor to meet its senior unsecured debt obligations reflects the sponsor's ability to meet pension plan funding obligations because of the parity in bankruptcy of senior unsecured debt and pension plan obligations. PBGC's experience with its Early Warning Program[11] suggests that the higher the financial quality of a plan sponsor, the greater is the sponsor's commitment to its pension plan and its ability to meet its pension funding obligations. And analysis of PBGC data indicates that the credit ratings of sponsors of the vast majority of underfunded plans taken over by PBGC were below investment grade for many years before termination.[12]

Typically, sponsors of pension plans that present the greatest exposure for PBGC (large plans that are not fully funded) are rated by one or more large nationally recognized statistical rating organizations (NRSROs) that are registered with the Securities and Exchange Commission. These NRSRO ratings are among the most well-known and widely used measures of financial soundness for such large plan sponsors. But while credit ratings of a plan sponsor or its senior unsecured debt obligations would seem to be a good basis for a financial soundness safe harbor, many plan sponsors (primarily small plan sponsors) do not have such ratings. Furthermore, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) requires federal agencies to remove references to and requirements of reliance on credit ratings in regulations.[13]

To avoid these drawbacks, PBGC proposes to use, as one of five criteria of financial soundness, credit scores reported by commercial credit reporting companies (CCRCs), which are already issued for the vast majority (over 90 percent) of businesses that sponsor plans covered by Title IV of ERISA. These commercial ratings are substantially different from traditional credit ratings. A CCRC generally assesses the creditworthiness of a business by reference to the ability of the business to pay its trade and other debts rather than by reference to the financial strength of the business reflected in financial statements (as credit rating agencies do). Just as a company's credit score is used by prospective creditors in evaluating the probability that an obligation will be paid, PBGC believes that it can appropriately use such scores as a measure of financial strength, which in turn is an indicator of the level of risk that a company will fail to meet its pension plan funding obligations. CCRCs are not within the purview of the Dodd-Frank Act since the relevant provisions cover credit ratings and credit rating agencies but not credit reporting companies (or, by implication,

[9] For multiple employer plans, all sponsors would have to qualify.

[10] In 2011, 90 percent of reportable events reports from filers that were below investment grade resulted in the opening of case files. For this purpose, "investment grade" means a credit rating of Baa3 or higher by Moody's or BBB- or higher by Standard and Poor's.

[11] See Technical Update 00–3.

[12] See Private Pensions, Recent Experiences of Large Defined Benefit Plans Illustrate Weaknesses in Funding Rules, GAO, May 2005, *http://www.gao.gov/new.items/d05294.pdf*, p. 30. For this purpose, GAO considered "investment grade" to correspond to a rating of BBB or higher.

[13] See section 939A of the Dodd-Frank Act.

the credit scores and reports they produce).[14]

To make the credit scores underlying this test for the financial soundness safe harbor as reliable and as uniform as possible, and minimize the burden of obtaining such scores, PBGC proposes to require that a credit score be reported by a CCRC that is commonly used in the business community (*e.g.,* Dun & Bradstreet [15]). To satisfy this criterion for the financial soundness safe harbor, the credit report of a plan sponsor (or highest U.S. parent) by a CCRC that is commonly used in the business community would have to reflect a credit score indicating a low likelihood that the company would default on its obligations.

Scores that satisfy the standard in the regulation may change over time, because of changes in scoring methods or for other reasons. PBGC will provide, and update as necessary, reportable events filing instructions to guide filers in determining whether their credit scores meet the standard. The instructions will include one or more examples of scores by commercial credit reporting companies commonly used in the business community that indicate a low likelihood that a company will default on its obligations. To give an idea of the level of score that PBGC has in mind, a minimum Dun & Bradstreet financial stress score of 1477 would have satisfied the standard in 2011.

PBGC invites commenters to identify CCRCs other than Dun & Bradstreet that are commonly used in the business community now and to suggest ways that PBGC can remain currently informed of the identity of all such CCRCs as usage by the business community changes over time.

This financial strength criterion relies on private-sector commercial credit scores that most plan sponsors (or their U.S. parents) already have and that are used in a wide variety of business contexts. Such scores represent well known, objective, non-governmental assessments of financial soundness. PBGC would not itself evaluate the creditworthiness of plan sponsors as a condition to sponsors' use of the safe harbor. Sponsors would not have to certify or prove creditworthiness to PBGC—or even report a credit score—in order to take advantage of the safe harbor. For a sponsor not currently the subject of credit reporting, PBGC believes it would entail minimal effort and expense to have a CCRC that is commonly used in the business community begin issuing such reports on the sponsor.[16] As discussed below under *Small-Plan Waivers,* small plans would have separate exemptions.

As stated above, a sponsor would come within the financial soundness safe harbor if it passed the "credit report" test and in addition satisfied four further criteria.

One of these further criteria for the sponsor financial soundness safe harbor would be based on whether the sponsor (or its highest-level U.S. parent) has secured indebtedness. A lender's insistence on security reflects a level of concern over whether its loan will be timely repaid, typically because it judges that the borrower's creditworthiness is questionable. Thus, in general, if a company is forced to make use of secured debt, there is the suggestion of risk of loss that must be mitigated by the securing of collateral. If the borrower is a plan sponsor, there is a concomitant risk of underfunded plan termination during that same time frame. Conversely, this implication of risk does not arise where a company is not forced to borrow with security. Thus, an absence of secured indebtedness tends to be associated with a greater degree of financial soundness.

For purposes of this test, PBGC would except indebtedness incurred in connection with the acquisition or improvement of property and secured only by that property—such as mortgages and equipment financing (including capital leases). Secured debt of this kind is not uncommon even for financially sound businesses. But PBGC is aware that there may be other circumstances in which a company capable of borrowing without security might nonetheless choose to offer security to a lender—for example, if doing so would significantly reduce the cost of a loan. PBGC seeks public comment on the extent to which the proposed no-secured-debt test might be failed by plan sponsors whose risk level is in fact as low as that of other sponsors capable of passing the test. PBGC also seeks suggestions for ways to modify the no-secured-debt test—for example, by carving out a wider class of debt than purchase-money obligations—to make it correspond better with commercial reality.

Another criterion for the sponsor financial soundness safe harbor would be that, for the past two years, the sponsor (or its highest-level U.S. parent) has had positive net income under generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS). This requirement serves to confirm both that the business is successful and that it has been operating for at least two years. (For non-profit entities, "net income" would be measured as the excess of total revenue over total expenses as required to be reported on Internal Revenue Service Form 990.)

In this connection, PBGC seeks public comment on the extent to which there are companies whose financial statements are not prepared using GAAP or IFRS but whose income level is comparable to the standards proposed for this criterion. PBGC seeks suggestions for supplementing the GAAP/IFRS standards with alternative standards to accommodate such companies.

The two remaining criteria are intended similarly to supplement and confirm the general picture of financial soundness painted by the satisfaction of the credit report test. These two requirements would be that the business have no debt service problems and be current with its pension plan contributions. More specifically:

- For the past two years, the business would have to have not met the criteria for an event of default with respect to a loan with an outstanding balance of $10 million or more, regardless of whether the default was cured or if the lender entered into a forbearance agreement or waived the default. Defaults on credit agreements suggest the business may be underperforming and at greater risk of not meeting its debt obligations.
- For the past two years, the business would have to have no missed pension contributions, other than quarterly contributions for which reporting is waived. Like the debt service requirement, this criterion addresses the likelihood that the business will reliably fund its pension plans.

[14] The Securities Exchange Act of 1934 (the Exchange Act), which is amended by relevant portions of the Dodd-Frank Act, defines a "credit rating" as an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments and a "credit rating agency" as any entity engaged in, among other things, the business of issuing credit ratings. See sections 3(a)(60) and (61) of the Exchange Act. However, the definition of credit rating agency under section 3(a)(61) of the Exchange Act specifically "does not include a commercial credit reporting company."

[15] Dun & Bradstreet provides free credit reports to companies willing to provide certain financial information for analysis and a free alert system to inform companies of changes in their credit scores (to permit inexpensive monitoring) and issues credit reports on at least 90 percent of sponsors of PBGC-covered plans. The United Kingdom's Pension Protection Fund, which performs pension protection functions like PBGC's, uses Dun & Bradstreet analyses to measure the risk of insolvency of sponsoring employers.

[16] A company may have its credit score reported by a CCRC simply by providing relevant data to the CCRC.

Because of the novelty of the sponsor financial soundness standard and in the spirit of E.O. 13563's call for greater public participation in rulemaking, PBGC specifically invites public comment on the new risk-based financial soundness safe harbor for plan sponsors, as well as suggestions from the public for other tests or combinations of tests on which the sponsor financial soundness safe harbor might be based. PBGC seeks answers to the questions listed under Public Participation below and suggestions for alternative approaches to determining financial soundness based on widely-available and accepted financial standards.

Financial Soundness Safe Harbor for Plans

Most of the commenters opposed the elimination from the reportable events regulation of automatic reporting waivers based on plan funding, as proposed in 2009. PBGC now proposes to retain plan funding as a basis for relief from filing requirements for the same five events as the sponsor financial soundness safe harbor discussed above, by providing new "safe harbors" based on plan financial soundness. The standard of financial soundness for these new safe harbors would be a plan's funding status. A special rule would accommodate the needs of small plans in determining funding status.

The safe harbors would be less complex than the current funding-based waivers. The current regulation provides funding-based waivers with several different thresholds—for example, waivers are available where a plan pays no variable-rate premium,[17] has less than $1 million in unfunded vested benefits, or is 80 percent funded for vested benefits. Some waivers are based on a combination of a funding criterion and a non-funding criterion—for example, reporting of a controlled group change event is waived where a plan is 80 percent funded and the plan sponsor is a public company. Different waiver criteria or combinations of criteria apply to different events. PBGC's proposed safe harbors for financially sound plans would involve just two alternative tests, which would be the same for all events covered by the safe harbors.

Both tests (like most of the current funding-based waiver tests) would be based on plan funding level, which is a comparison of assets to liabilities. Determining liabilities—calculating a present value for the obligation to pay benefits for years into the future—requires that actuarial assumptions be made about such things as the rate of return on investments, when participants are likely to retire, and how long they are likely to live. The actuarial assumptions used, and thus the present value arrived at, may differ significantly depending on whether the plan is considered "ongoing"—that is, expected to continue in operation indefinitely—or terminating. For example, assumptions about when participants will retire would be different for an ongoing plan than a terminating plan; in a terminating plan, participants generally retire earlier and may receive early retirement subsidies. Liabilities—the present value of future benefits—are typically higher on termination assumptions than on ongoing assumptions, and thus, for a given amount of assets, a plan's termination-basis funding percentage is typically lower than its funding percentage on an ongoing basis.

From PBGC's perspective, it is more appropriate to measure plan funding levels using termination-basis assumptions than ongoing-plan assumptions because termination is what brings a plan under PBGC administration. In the context of the pension insurance system, a plan's funding level on a termination basis provides the better measure of exposure—that is, the magnitude of the financial impact PBGC and participants would suffer if the plan then (or soon thereafter) terminated. But from a plan perspective, funding on an ongoing basis is the more common measure. Variable-rate premiums, required contributions, benefit restrictions, and annual funding notices are all based on ongoing-plan calculations. Unless filing is required under ERISA section 4010 (dealing with annual financial and actuarial information reporting for controlled groups with large underfunding), plans typically do not calculate funding on a termination basis. PBGC considers it desirable to adopt a funding measure that links with calculations that plans already make.

The funding-based waivers in the existing regulation are generally tied to variable-rate premium computations,[18] which use ongoing-plan assumptions. Under the current regulation, plans that are funded for 80 percent of premium liability qualify for reporting waivers for several reportable events. PBGC has found this test to be an inadequate threshold measure, because premium liability is significantly lower than termination liability, so that a plan that is 80 percent funded on a premium basis is likely to be much more significantly underfunded on a termination basis. In developing the revised plan funding safe harbor thresholds, PBGC reviewed plans with at least 100 participants that PBGC trusteed in fiscal years 2009 and 2010 and through April of fiscal year 2011 and compared the funded percentage at the date of plan termination (DOPT) measured on a termination basis to the VRP funded percentage for the plan year before the year in which DOPT occurred.[19] This analysis showed that the average termination funded status at DOPT was 54 percent and the average VRP funded status for the year before DOPT was 84 percent. The analysis also showed great variability of funded status among the plans, and PBGC found no direct correlation between the two funding measures.

If a plan is fully funded on a termination basis, on the other hand, any risk associated with a reportable event can reasonably be ignored because the exposure can reasonably be considered to be zero. PBGC therefore proposes to provide a safe harbor from reporting for most of the events to which funding-based waivers now apply[20] if the plan involved is fully funded on a termination basis on the last day of the plan year preceding the event year. But since funding on a termination basis is not commonly calculated for most plans—and since PBGC wants to provide another way to qualify for the safe harbor that is more accessible and yet provides a reasonably low exposure when compared to a termination-basis measurement—PBGC is also proposing to extend the safe harbor treatment to any case where the plan involved is 120 percent funded on

[17] In general, the variable-rate premium is based on unfunded vested benefits. However, in some cases no variable-rate premium might be owed because of an exemption. For example, before 2008, ERISA provided an exemption from the variable-rate premium for a plan at the "full-funding limit," even if the plan had unfunded vested benefits. The exemption was removed by PPA 2006.

[18] The sole exception is a waiver for the benefit liability transfer event, which applies if (among other things) the transferor and transferee plans are fully funded using the computation methods for calculating employer liability for terminated plans.

[19] Some 134 plans fall into this category, but 17 were excluded because of incomplete or questionable data.

[20] As discussed above under *Automatic waivers and extensions—overview*, PBGC proposes to exclude the liquidation and loan default events from the funding-based waiver because those two events imply sponsor financial difficulties that may affect plan contributions and lead to a decline in funding level.

a premium basis for the plan year preceding the event year.[21]

The 20-percent cushion is needed to help compensate for several differences between the termination-basis funding level and the VRP-basis funding level. First, the VRP funding level is to be measured in general one year earlier than the termination funding level.[22] The lapse of a year raises the risk that funding will deteriorate between the measurement date and the event date. Second, the VRP funded percentage is calculated with ongoing-plan assumptions, which (as discussed above) generally yield higher funding percentages than termination-basis assumptions. Third, premium liability reflects only vested benefits, whereas termination liability is based on all benefits.[23]

As noted above, PBGC data indicate that funded status on a termination basis in the recent past was about 30 percentage points lower than the prior year's VRP funded status. Thus, while a 20-percent VRP cushion will be in some cases more and in others less than enough to reduce exposure to the same near-zero level as full funding on a termination basis, it should overall give an acceptable result for purposes of this safe harbor.

One difficulty with tying the safe harbor to the prior year's premium calculations is that a small plan's premium calculations may be as of a date as late as the last day of the year. For this reason, the premium filing due date for plans with fewer than 100 participants is four months after the end of the premium payment year. To address this situation, PBGC proposes to give a filing extension, in cases where the plan is small, until one month after the prior year's premium filing due date (*i.e.*, five months after the end of the prior year). For a small calendar-year plan, this would mean that for the five reportable events subject to the proposed funding-based safe harbor, the notice date for an event that occurred from January 1st through May 1st would be May 31st.[24]

The corresponding extension under the current reportable events regulation is available only if the plan would have qualified for the funding-based waiver for the preceding year. The proposed rule omits this qualification. Where an event subject to the safe harbor involves a small plan that does not qualify for the safe harbor, therefore, PBGC would get notice of the event as much as three months later than the generally applicable deadline. This delay might significantly impair PBGC's administration of Title IV of ERISA for such plans. On the other hand, an unconditional extension is simpler, and PBGC prefers that the relief provided by this small-plan extension not be diluted with complexity. Considering the lower exposure typically associated with small plans, PBGC is proposing to accept the (probably modest) impairment of its enforcement function in order to make compliance easier for such plans.

Other Safe Harbor Proposals

Alternatively or in addition to the safe harbor proposals described above, PBGC is inviting the public to propose variant safe harbors that build on the same risk-related concepts by altering the mix and/or relative stringency of the constituent tests of the sponsor safe harbor or combining tests from the sponsor and plan safe harbors. Ideally, proposals would reduce reporting burden for plans and sponsors for which reportable events most likely do not pose risks for the pension insurance program and thus focus reporting on higher-risk events. (See Public Participation below.)

Small-Plan Waivers

Rather than eliminating the small-plan waiver for active participant reductions (as it proposed in 2009), PBGC now proposes to retain a modified version of the waiver and to make it applicable to more events. Some commenters expressed concern about the adverse effect on small plans of eliminating waivers and extensions for reporting active participant reductions, pointing out that loss of a handful of employees as a result of normal turnover in a small company could cross the reporting threshold but be unrelated to financial distress.

As noted in the preamble to the 2009 proposed rule, PBGC data suggest that in nearly a quarter of small-plan terminations, the small-plan reporting waiver has prevented PBGC from learning about problems that might have been resolved through early outreach to plan sponsors, avoiding termination or reducing underfunding. Information from other sources (for example, Form 5500) is typically neither as detailed nor as timely. On the other hand, PBGC can get such information without imposing any additional burden on plans and sponsors. Weighing the disadvantages of relying on these other sources of information against the challenges faced by small plans and their sponsors in reporting active participant reduction events, PBGC is now proposing to provide a waiver for these events like the existing small-plan waiver, except that, for simplicity, small-plan status would be determined in the same way as for purposes of the premium filing rules.

In addition, PBGC proposes to extend the small-plan waiver to three other events: controlled group changes, benefit liability transfers, and extraordinary dividends. Like active participant reductions, these events tend to be less serious than the events for which the safe harbors are unavailable. Furthermore, small plan sponsors typically are not members of controlled groups and generally do not have multiple lines of business. Thus stock or asset spinoffs (which could result in benefit liability transfers) and controlled group changes in general are infrequently experienced by such plans and sponsors. And extraordinary dividend events are relatively unusual for sponsors of plans of any size. In contrast, the burden on small plans and sponsors of monitoring for and reporting these events is relatively significant. Weighing that burden against the number and significance of the resultant reports, PBGC has concluded that small-plan waivers for these events seem appropriate.

Foreign-Entity and De Minimis Waivers

The current reportable events regulation provides reporting waivers for several events where the entity or entities involved in the event are foreign entities or represent a *de minimis* percentage of a controlled group.[25]

[21] Variable-rate premium ("VRP") funding information for a plan year is generally unavailable until the latter part of the year or (for many small plans) the early part of the following year. Thus it is more feasible to base the safe harbor test on premium information for the year before the event year. One of the reasons PBGC chose the ratio of assets to liabilities calculated according to premium rules as the standard for the funding-based safe harbor, rather than the vested portion of the funding target attainment percentage ("FTAP") defined in section 430(d)(2) of the Internal Revenue Code, is that the FTAP is not reported (and may not be calculated) until a year later than the VRP. Another reason is that the VRP is determined using current market value of assets, whereas the FTAP often reflects an actuarially smoothed assets figure.

[22] For some small plans, premium funding is computed later in the premium payment year and thus nearer (or on) the proposed date for determining termination-basis funding.

[23] PBGC's obligation to pay non-vested benefits is conditioned on the availability of funds from plan assets or recoveries of employer liability for plan underfunding.

[24] No such extension would be needed for plans with 100 or more participants. Such plans calculate premiums as of the first day of the plan year and file premium declarations well before the end of the plan year. Thus, for example, a calendar year plan should know by October 15, 2013, whether it qualified for the premium-based funding safe harbor for events in 2014.

[25] Both types of waiver apply to controlled group change, liquidation, and extraordinary dividend;

PBGC's 2009 proposal preserved most *de minimis* waivers in the existing regulation but eliminated all foreign-entity waivers, because an increasingly large part of PBGC's insurance supervision and compliance cases deal with foreign controlled group members—a logical consequence of the globalization of the economy. All members of a plan's controlled group, whether domestic or foreign, are liable for plan underfunding. PBGC now proposes to provide both *de minimis* and foreign-entity waivers in tandem for five reportable events.

A number of commenters made the point that it can be difficult for a plan to keep track of events involving foreign controlled group members and argued that events involving foreign entities are too remote to warrant reporting to PBGC. Particular events mentioned in this regard included loan defaults, bankruptcies, controlled group changes, and extraordinary dividends. Commenters also expressed the view that PBGC's processing burden for reports on events involving foreign entities would be disproportionate to the value of the information in the reports, with the implication that requiring such reports would result in a misallocation of PBGC's resources.

PBGC is persuaded that the challenges a plan or sponsor faces in keeping informed about events involving foreign members of the plan's controlled group may prove more burdensome than is currently required to protect the pension insurance system. Furthermore, multinational controlled groups that report publicly tend to be tracked by PBGC's Early Warning Program, which, while it is no substitute for reportable event reports, does give PBGC some idea of the status of such groups. PBGC has concluded that these considerations constitute an appropriate basis for providing relief from reporting, even though that means it must forgo the receipt of useful information that may be important to its monitoring and enforcement activities.

Accordingly, PBGC now proposes to preserve all post-event foreign-entity reporting waivers in the existing regulation. As with all regulatory provisions, PBGC will monitor developments in this area and may revisit this position if experience indicates a need for stronger monitoring mechanisms. In addition, PBGC now proposes to retain all post-event reporting waivers for *de minimis* transactions [26] and to add *de minimis* waivers for two events—loan defaults and non-bankruptcy insolvency [27]—that do not have such waivers under the existing regulation. Thus, this pair of waivers would apply to five events. For liquidation, loan default, and insolvency, the *de minimis* waiver would be available only if the entity involved in the event was not a contributing sponsor. The waiver would use the ten percent *de minimis* standard, even for extraordinary dividends and stock redemptions under § 4043.31, for which the existing *de minimis* waiver is limited to a five percent segment of a controlled group.

Effect of Proposal on Loan Agreements

Some commenters said that, for plan sponsors with loan agreements, the increased reporting resulting from the elimination of waivers could give rise to events of default, a view that PBGC has been unable to substantiate. The commenters, who also said that requiring more reporting could preclude future loans or provide lenders with a pretext for renegotiating loan terms, did not provide any actual loan agreement provisions to support these contentions; to clarify its understanding of the commenters' concerns, PBGC reviewed 25 credit agreements from 20 distressed and/or small public companies.[28] PBGC reasoned that lenders to distressed companies would tend to be particularly sensitive to reportable events and that this heightened sensitivity would be reflected in loan agreement provisions of the kind that commenters expressed concern about. The smaller reporting companies provided a proxy for non-public companies (for which loan agreements are generally not made public).

- An event of default would not be automatically triggered by a reportable event in any of the 25 agreements reviewed, and 17 of the agreements would not have been affected at all by the changes in the 2009 proposed rule. For each of the eight agreements with event-of-default provisions that would have been affected by the 2009 proposal, an event of default would occur only when a reportable event was accompanied by some other significant condition, such as incurring actual liability, creation of grounds for termination, or the occurrence of a material adverse effect.
- Nine of the agreements PBGC reviewed had no requirement that the borrower notify the lender of a reportable event. Six agreements required notice only if some other condition was present (as for events of default). Five defined "reportable event" without regard to whether reporting was waived.
- Fewer than half of the agreements surveyed required representations or warranties about reportable events as a condition to future advances.

The results of examining these loan agreements are consistent with PBGC's experience from reviewing loan documents as part of its direct monitoring of corporate events and transactions of plan sponsors. PBGC has been unable to find a record of any case where the filing of a reportable event notice has resulted in a default under a credit agreement. These observations suggest that the elimination of reporting waivers would not adversely affect most plan sponsors with loan agreements.

Because PBGC's current proposal provides more waivers than the 2009 proposal, commenters' concerns in this area should be lessened. And PBGC's proposed deferral of the applicability date for the final regulation should give plan sponsors time to consult with loan providers about appropriate amendments to loan agreements. However, if this concern is raised in a comment about the current proposal, PBGC requests that the commenter document the basis for the comment by providing copies of relevant loan agreements and information about the number and circumstances of plan sponsors that have experienced default or suffered other adverse consequences

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the foreign entity waiver also applies to loan default and bankruptcy. The foreign entity waiver is limited to entities that are not direct or indirect parents of contributing sponsors, and discussion of the foreign-entity waiver in this preamble should be understood to incorporate this limitation.

[26] PBGC proposes to eliminate one of three alternative tests for the annual operating income criterion that must be met for *de minimis* status: that such income not exceed 5 percent of the first $200 million in controlled group net tangible assets. PBGC believes that the other two alternatives provide a sufficient threshold. The change would apply to both post-event and advance notices.

[27] PBGC can obtain bankruptcy filings directly, so a separate PBGC report is unnecessary. For this reason, PBGC proposes to revise the reportable event covering bankruptcy and similar settlements to limit it to non-bankruptcy events only. See *Bonkruptcy ond Insolvency* below.

[28] PBGC obtained the loan agreements from the Web site of the Securities and Exchange Commission (*www.sec.gov*). The companies with distressed plans were selected from an online business article titled "40 Companies Sitting on Pension Time Bombs," posted at *http://moneycentral.msn.com/content/P87329.osp*, on August 25, 2004. PBGC found no relationship between the assumed financial straits of the companies' plans and any specific loan agreement provisions that might have reflected lenders' sensitivity to the significance of reportable events. The limited scope of this study reflects the practical difficulty of obtaining and reviewing a statistically significant sample of loan agreements (the vast majority of which are not publicly available) involving sponsors of the more than 27,500 single-employer plans covered by Title IV of ERISA. PBGC nonetheless believes that the loan agreements that were reviewed do offer some insight into loan agreement drafting practices that is relevant to the concerns expressed by commenters.

related to loan agreements as a result of a reportable event.

Advance Reporting Threshold

In general, reportable events must be reported to PBGC within 30 days after they occur. But section 4043(b) of ERISA requires advance reporting by a contributing sponsor for certain reportable events if a "threshold test" is met, unless the contributing sponsor or controlled group member to which an event relates is a public company. The advance reporting threshold test is based on the aggregate funding level of plans maintained by the contributing sponsor and members of the contributing sponsor's controlled group. The funding level criteria are expressed by reference to calculated values that are used to determine VRPs under section 4006 of ERISA. The reportable events regulation ties the statutory threshold test to the related provisions of the premium rates regulation.

The advance reporting threshold test in ERISA section 4043(b)(1) provides that the advance reporting requirements of section 4043(b) are to be applicable to a contributing sponsor if, as of the close of the preceding plan year—

- The aggregate unfunded vested benefits (UVBs) (as determined under ERISA section 4006(a)(3)(E)(iii)) of plans subject to title IV of ERISA which are maintained by such sponsor and members of such sponsor's controlled groups (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and
- The funded vested benefit percentage for such plans is less than 90 percent.

For this purpose, the funded vested benefit percentage means the percentage which the aggregate value of the assets of such plans bears to the aggregate vested benefits of such plans (determined in accordance with ERISA section 4006(a)(3)(E)(iii)).

PPA 2006 revised ERISA section 4006(a)(3)(E)(iii) to say that UVBs means, for a plan year, the excess (if any) of the funding target of the plan as determined under ERISA section 303(d) for the plan year by only taking into account vested benefits and by using the interest rate described in ERISA section 4006(a)(3)(E)(iv), over the fair market value of plan assets for the plan year which are held by the plan on the valuation date.

The section 303 of ERISA referred to here is a completely new section added by PPA 2006.[29] Under new ERISA section 303(g)(1), the value of plan assets and the funding target of a plan for a plan year are determined as of the valuation date of the plan for the plan year. Under new ERISA section 303(g)(2), the valuation date for virtually all plans subject to advance reporting under ERISA section 4043 will be the first day of the plan year. Thus, while ERISA section 4043(b)(1) refers to UVBs, assets, and vested benefits "as of the close of the preceding plan year," in nearly all cases these quantities must, with respect to plan years beginning after 2007, be calculated as of the beginning of a plan year. This creates an ambiguity with regard to the date as of which the advance reporting threshold test is to be applied.

This proposed rule, like the prior proposal, would resolve this ambiguity by requiring that the advance reporting threshold test be applied as of the valuation date for "the preceding plan year." That is the same date as of which UVBs, assets, and vested benefits must be determined for premium purposes for the preceding plan year under the premium rates regulation as amended by PBGC's final rule on VRPs under PPA 2006. Measuring these quantities as of that date for purposes of the advanced reporting threshold test will thus be less burdensome than requiring that separate computations be made as of the close of that year. It will also enable a plan to determine before a reportable event occurs (and before an advance report is due) whether it is subject to the advance reporting requirement.

The new proposed rule (like the prior proposal) would make a number of editorial changes to the advance reporting threshold provisions with a view to improving clarity and simplicity as well as accommodating the changes discussed above. It would also provide that the plans whose funding status is taken into account in applying the threshold test are determined as of the due date for the report, and that the "public company" status of a contributing sponsor or controlled group member to which the event relates is also determined as of that date. Although the existing regulation does not explicitly address this issue, PBGC believes it is implicit that these determinations be current. Requiring that they be made as of the due date for the report ensures currency.

Active Participant Reduction

In general, a reportable active participant reduction occurs when the number of active participants is reduced below 80 percent of the number at the beginning of the year or below 75 percent of the number at the beginning of the prior year.

Several commenters remarked that a loss of more than 20 percent of active participants within a year (or more than 25 percent within two years) may result from gradual attrition and that if no waiver is applicable, constant vigilance is required to catch the moment when the threshold for reporting is crossed. Such vigilance could be burdensome for a large plan and might simply not be exercised for a small one. PBGC is sympathetic to this issue and is proposing to modify the definition of the active participant reduction event to address it.

Under the proposed change, a reportable event would occur during the plan year only when the reporting threshold was crossed either within a single 30-day period or as a result of a single cause like the discontinuance of an operation, a natural disaster, a reorganization, a mass layoff, or an early retirement incentive program. Such circumstances should be easy to spot without exercising unusual vigilance. To capture events arising from gradual attrition, the proposed regulation would require that plans measure active participant reductions at the end of each year and report if the threshold has been crossed. Fluctuations within the year would be ignored. If the active participant count at the end of the year were more than 20 percent below the count at the beginning of the year, or more than 25 percent below the count at the beginning of the prior year, reporting would be required. To provide time to count active participants as of the end of the year, the notice date for attrition events would be extended to 120 days after year end, by which time PBGC expects many or most plans to have a final count.[30]

For convenience, if a plan counted participants, for purposes of the following year's premiums, as of a day other than the last day of the year for which active participant loss was being measured (such as where there was a qualifying merger or spinoff), the plan could use the active participant count on that other day as the year-end count for determining whether active participant attrition had exceeded the threshold. However, the reduction in active participants would still be considered to have occurred at the end of the measurement year.

Because this change would render unnecessary the waiver in the 2009 proposed rule for a report within one

[29] Section 303 of ERISA corresponds to section 430 of the Code.

[30] In most situations, a rough estimate will be sufficient to determine if the threshold has been crossed.

year of a prior report, that provision is absent from the current proposal. However, the changes now being proposed include the provision from 2009 that dealt with substantial cessations of operations under ERISA section 4062(e) and substantial employer withdrawals under ERISA section 4063(a). Events covered by section 4062(e) or 4063(a) must be reported to PBGC under section 4063(a). With a view to avoiding duplicative reporting, this proposal, like the 2009 proposal, would limit the active participant reduction event by excluding from consideration—in determining whether a reportable active-participant-reduction event has occurred—active participant reductions to the extent that they (1) fall within the provisions of section 4062(e) or 4063(a) and (2) are timely reported to PBGC as required under ERISA section 4063(a).

One commenter expressed satisfaction with this provision; two others raised issues about the interplay of this event and a section 4062(e) event, suggesting, for example, that there was opportunity for confusion between the 30-day notice requirement under section 4043 and the 60-day notice requirement for 4062(e) events. PBGC does not see how this provision would exacerbate any such problems (and indeed believes that it would tend to ameliorate them).[31]

Finally, one commenter requested clarification that participants do not cease to be active if they leave employment with one member of a plan's controlled group to become employed by another controlled group member. PBGC proposes to add a provision to make this point clear.

Missed Contributions

A missed contribution event occurs when a plan sponsor fails to make any required plan contribution by its due date.

PBGC proposes (as it did in 2009) to clarify the language in § 4043.25, dealing with the reportable event of failure to make required contributions. This reportable event does not apply only to contributions required by statute (including quarterly contributions under ERISA section 303(j)(3) and Code section 430(j)(3), liquidity shortfall contributions under ERISA section 303(j)(4) and Code section 430(j)(4), and contributions to amortize funding waivers under ERISA section 303(e) and Code section 430(e)). It also applies to contributions required as a condition of a funding waiver that do not fall within the statutory provisions on waiver amortization charges. The proposed revision would make this point clearer.[32]

The 2009 proposed rule called for eliminating all reporting waivers for missed contributions. PBGC now proposes to provide waivers for this event.

Some commenters urged PBGC to retain the grace-period waiver in the current regulation (where payment is made within 30 days after the due date). Commenters pointed out that contributions are sometimes missed through administrative error and that the availability of the grace-period waiver gives sponsors an incentive to make up missed contributions. Commenters also suggested that because new rules require a sponsor to elect to apply a funding balance towards a quarterly installment, a late installment often results from a late election due to administrative error.

PBGC is persuaded that missed contributions that are made up within 30 days do not generally pose excessive risk to the pension insurance system. Form 5500 filings provide another (albeit somewhat later) source of information about late contributions, and there is an independent reporting requirement for large cumulative missed contributions under ERISA section 303(k)(4) and Code section 430(k)(4) (implemented by § 4043.81 of the reportable events regulation). Accordingly, the current proposal would restore the grace-period waiver in the existing regulation that the 2009 proposal would have eliminated.

Commenters also urged PBGC to provide small-plan missed-quarterly reporting relief like that which has for years been provided by Technical Update, and PBGC proposes to do so. Commenters said that small plans often forgo or delay quarterly contributions to strategically manage cash flow or until valuations are completed (a practice that does not accord with the law and that PBGC does not condone). Commenters suggested that late quarterly installments often do not signal a plan sponsor's actual financial distress or a plan's imminent termination.

PBGC believes that a small-plan missed-quarterly waiver can strike an effective balance between PBGC's need for information on potentially troubled plans and the reporting challenges faced by small entities. Furthermore, since annual reports on Form 5500 are now filed electronically, PBGC believes that contribution information on Schedule SB to Form 5500 can help round out the information submitted under the reportable events regulation. Thus, PBGC is proposing to add to the regulation a simplified small-plan missed-quarterly waiver to replace the Technical Update waivers. The codified waiver would apply to any failure to make a quarterly contribution to a plan considered small for purposes of the premium filing rules (*i.e.*, having fewer than 100 participants; the waiver under Technical Update 11–1 applies only to plans with fewer than 25 participants). Unlike the grace-period waiver, the small-plan waiver would apply only to quarterly contributions.

Inability To Pay Benefits When Due

In general, a reportable event occurs when a plan fails to make a benefit payment timely or when a plan's liquid assets fall below the level needed for paying benefits for six months.

As in 2009, PBGC proposes to clarify the large-plan waiver of the reporting requirement for inability to pay benefits when due. This waiver provision reflects PBGC's judgment that it need not require reporting of this event by larger plans that are subject to the "liquidity shortfall" rules imposing more stringent contribution requirements where liquid assets are insufficient to cover anticipated disbursement requirements. For these larger plans, (1) if the contributions required by the liquidity shortfall rules are made, the inability to pay benefits when due is resolved, and (2) if the required contributions are not made, that fact is reportable to PBGC as a failure to make required contributions. Accordingly, this provision waives reporting unless the plan is exempt from the liquidity shortfall provisions.

Distribution to Substantial Owner

Distributions to substantial owners must generally be reported if they exceed $10,000 in a year unless the plan is fully funded for nonforfeitable benefits.

One commenter on the 2009 proposal argued that distributions to substantial owners tend to be thought of as routine and may "creep" beyond the $10,000 reporting threshold unremarked and unreported. In response, PBGC proposes to make two changes to the regulation.

[31] On August 10, 2010 (at 75 FR 48283), PBGC published a proposed rule to provide guidance on the applicability and enforcement of ERISA section 4062(e). PBGC is currently giving careful consideration to the comments on that proposed rule.

[32] Such "non-statutory" contributions are not taken into account under ERISA section 303(k) and Code section 430(k), dealing with liens that arise because of large missed contributions, and are therefore disregarded under § 4043.81, which implements those provisions. However, violating the conditions of a funding waiver typically means that contributions that were waived become retroactively due and unpaid and are counted for purposes of § 4043.81.

First, PBGC proposes to add to the description of this event a provision limiting the event to circumstances where the distributions to one substantial owner exceed one percent of plan assets or the distributions to all substantial owners exceed five percent of plan assets. (The one-percent provision echoes a waiver for this event that is in the existing regulation but that PBGC proposes to eliminate.) In either case, assets would be end-of-year current value of assets as required to be reported on Schedule H or I to Form 5500, and the one percent or five percent threshold would have to be exceeded for each of the two prior years. By requiring notices only for larger distributions that should be noticeable and thus not challenging to detect and report, PBGC believes that it would strike an acceptable balance between the burden of reporting and PBGC's need for timely information about such events.

In addition, PBGC proposes to limit reporting for distributions in the form of annuities to one notice: The first notice required under the normal reporting rules would be the only notice required so long as the annuity did not increase. Once notified that an annuity was being paid to a substantial owner, PBGC would need no further notices that the annuity was continuing to be paid.

Controlled Group Change

A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons' ceasing to be members of the plan's controlled group. For this purpose, the term "transaction" includes a written or unwritten legally binding agreement to transfer ownership or an actual transfer or change of ownership. However, a transaction is not reportable if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

One commenter asked PBGC to clarify that a reportable event does not occur when there is a reorganization within an employer's controlled group in which a member ceases to exist because it is merged into another member. The example in § 4043.29(e)(3) of the current regulation indicates that such a merger is a reportable event because the disappearing member has ceased to be a member of the controlled group. After consideration, PBGC has decided to delete this example from the proposed rule to clarify that such a change solely within a controlled group is not a reportable event for purposes of the regulation.

PBGC has also from time to time received requests to clarify whether an agreement that is not to be effective unless some condition is met, such as the obtaining of some governmental approval or the occurrence of some other event, is nonetheless legally binding within the meaning of the regulation. The proposed rule would provide that whether an agreement is legally binding is to be determined without reference to any conditions in the agreement. PBGC's administration of the pension insurance system may be impaired if reporting is not required until all conditions are met. As for all reportable events, case-by-case waivers may be granted.

Extraordinary Dividends

An extraordinary dividend or stock redemption occurs when a member of a plan's controlled group declares a distribution (a dividend or stock redemption) that alone or in combination with previous distributions exceeds a level specified in the regulation. The current regulation specifies different threshold levels for cash and non-cash distributions and provides a method for aggregating cash and non-cash distributions in order to determine whether in combination they exceed the reporting threshold. Cash distributions must be tested over both a one-year and a four-year period, non-cash distributions only over a one-year period. The cash distribution threshold is 100 percent of net income; the non-cash distribution threshold is ten percent of net assets. Distributions within a controlled group are treated the same as any other distributions.

PBGC proposes to simplify the description of this event. The simplified event would occur when a controlled group member declared a dividend or redeemed its stock and the (cash or non-cash) distribution, alone or together with other cash and non-cash distributions, exceeded 100 percent of net income for the prior fiscal year. Testing would be over a one-year period only. The new formulation would eliminate much of the computational detail that the existing regulation prescribes for determining whether a reportable event has occurred by providing that the computations be done in accordance with generally accepted accounting principles. Distributions within a controlled group would be disregarded.

Eliminating the four-year test for cash distributions would tend to make more events of this kind reportable. Disregarding intra-group distributions would have the opposite effect. The effect of using only a net income figure as a threshold is harder to assess. But PBGC expects the effects of all of these changes to be modest. And elimination of much of the detail for combining the effects of cash and non-cash distributions should reduce the administrative burden of compliance with the requirement to report such events.

Transfer of Benefit Liabilities

Section 4043(c)(12) of ERISA requires reporting to PBGC when, in any 12-month period, three percent or more of a plan's benefit liabilities are transferred to a person outside the transferor plan's controlled group or to a plan or plans maintained by a person or persons outside the transferor plan's controlled group. Transfers of benefit liabilities are of concern to PBGC because they may reduce the transferor plan's funded percentage and because the transferee may not be as financially healthy as the transferor.

The existing reportable events regulation does not make clear whether the satisfaction of benefit liabilities through the payment of a lump sum or the purchase of an irrevocable commitment to provide an annuity constitutes a transfer of benefit liabilities for purposes of this reporting requirement. PBGC has received inquiries seeking clarification of this point and now proposes (as in 2009) to provide that such cashouts and annuitizations do not constitute transfers of benefit liabilities that must be reported under the regulation.

Section 436 of the Code and section 206(g) of ERISA (as added by PPA 2006) prohibit or limit cashouts and annuitizations by significantly underfunded plans. These provisions thus tend to prevent cashouts and annuitizations that would most seriously reduce a transferor plan's funded percentage. And since cashouts and annuitizations satisfy benefit liabilities (rather than transferring them to another plan), there is no concern about a transferee plan's financial health.

Section 4043.32(a) of the existing reportable events regulation requires post-event reporting not only for a plan that transfers benefit liabilities, but also for every other plan maintained by a member of the transferor plan's controlled group. However, existing § 4043.32(d) provides a waiver that in effect limits the post-event reporting obligation to the transferor plan. Existing § 4043.65 (dealing with advance reporting of benefit liability transfers) does not provide a similar waiver.

PBGC has concluded—as the preamble to the 2009 proposed rule indicated—that it is unnecessary to

extend the advance reporting requirement for benefit liability transfers beyond the transferor plan. PBGC thus proposes to revise § 4043.32(a) to narrow the reporting requirement to the transferor plan; to remove § 4043.32(d) (which would be redundant); and to revise § 4043.65(a) to remove the provision requiring that § 4043.32(d) be disregarded. The effect of these changes would be to leave the post-event notice requirement unchanged and to limit the advance notice requirement to the transferor plan.

Loan Default

Under the existing regulation, a loan default reportable event occurs when a loan payment is more than 30 days late (10 days in the case of advance reporting), when the lender accelerates the loan, or when there is a written notice of default based on a drop in cash reserves, an unusual or catastrophic event, or the debtor's persistent failure to meet agreed-on performance levels.

PBGC believes that the significance of loan defaults is so great that reporting should not be restricted to the current list of defaults. Rather, PBGC believes that any default on a loan of $10 million or more—even a default on a loan within a controlled group—should be reported unless a reportable event waiver applies. Accordingly, PBGC proposes to revise the definition of the loan default event so that it covers acceleration by the lender and default of any kind by the debtor.

In addition, PBGC proposes to expand this event to encompass any amendment or waiver by a lender of any loan agreement covenant for the purpose of avoiding a default. PBGC believes that a debtor can often anticipate a default situation, and that when it does, it may typically initiate discussions with its lender with a view to obtaining the lender's waiver of the covenant it expects to breach or an amendment of the loan agreement to obviate the default. In PBGC's view, such actions may reflect financial difficulty and thus, like actual defaults, pose serious challenges for the pension insurance system. These changes would apply for both post-event notices and advance notices.

PBGC believes that the treatment of loan defaults under the proposed rule is comparable to the treatment that would be experienced with a typical creditor. PBGC seeks the views of the public as to whether that belief is well-founded. PBGC further seeks public comment as to how it might better approximate such a model in its treatment of loan default events, whether there should be a materiality threshold with respect to events of default, and whether there is a category of "technical" defaults that should not be reportable events.

Bankruptcy and Insolvency

The existing regulation defines the bankruptcy reportable event to include bankruptcy under the Bankruptcy Code and any other similar judicial or nonjudicial proceeding. Notice of bankruptcies under the Bankruptcy Code can be (and routinely is) reliably obtained by other means. Accordingly, PBGC proposes to limit the reporting requirement to exclude bankruptcies under the Bankruptcy Code.

Advance-Notice Extensions

The current reportable events regulation provides extensions of the advance-notice filing deadline for three events: funding waiver requests, loan defaults, and bankruptcy/insolvency. The extension for funding waiver requests avoids the need to give one government agency (PBGC) advance notice of a filing with another government agency (IRS). The extensions for notices of loan defaults and bankruptcies or insolvencies accommodate situations where such events occur without the debtors' advance knowledge.

In general, however, a debtor is aware well in advance that a loan default or insolvency event is going to befall it, and indeed is actively engaged in preparation for the event. PBGC thinks it not unreasonable, therefore, that a debtor subject to advance reporting should generally give the advance notice provided for in the statute. Accordingly, PBGC proposes to eliminate reporting extensions for advance notice of loan default and insolvency events, except for events where insolvency proceedings are filed against a debtor by someone outside the plan's controlled group. In such adversarial filing cases, it is reasonable to expect that the debtor is unable to anticipate the event and thus unable to report it in advance.

PBGC is aware that there may be loan defaults that (like adversarial insolvency filings) can come as a surprise to the debtor, making compliance with the advance notice requirement impossible. However, since PBGC believes such loan defaults are very infrequent, the proposed rule does not contain an automatic extension for such situations. If inability to anticipate a loan default event were to make it impossible to comply with the advance notice requirement, the delinquent filer could seek a retroactive filing extension from PBGC based on the facts and circumstances. (An extension may similarly be requested if a filer learns of an impending event such a short time before the advance notice deadline as to make timely filing difficult.) PBGC specifically invites comment on whether this approach represents an adequate solution to any problem of surprise loan defaults that may exist.

Forms and Instructions

PBGC proposes to eliminate some of the documentation that must now be submitted with notices of two reportable events, but to require that filers submit with notices of most events some information not currently called for. Because the additional information to be submitted with notices is now typically requested by PBGC after notices are reviewed, the proposed changes would not significantly impact filers' total administrative burden.

PBGC also proposes, as it did in 2009, to make use of prescribed reportable events forms mandatory and to eliminate from the regulation the lists of information items that must be reported. PBGC anticipates that as it gains experience with the new reporting requirements and engages in further regulatory review, it may find it appropriate to make changes in the information required to be submitted with reportable events notices. In particular, resolution of uncertainties about the operation of PPA 2006 provisions may call for changes in the data submission requirements for failures to make required contributions timely. Forms and instructions can be revised more quickly than regulations can in response to new developments or experience (and both processes are subject to public comment).

PBGC issues three reporting forms for use under the reportable events regulation. Form 10 is for post-event reporting under subpart B of the regulation; Form 10-Advance is for advance reporting under subpart C of the regulation; and Form 200 is for reporting under subpart D of the regulation. Failure to report is subject to penalties under section 4071 of ERISA.

Under the existing regulation, however, use of PBGC forms for reporting events under subparts B and C of the regulation is optional. The data items in the forms do not correspond exactly with those in the regulation, and the regulation recognizes that filers that use the forms may report different information from those that do not use the forms. PBGC believes that making use of prescribed reportable events forms mandatory would promote greater uniformity in the reporting process and attendant administrative simplicity for

PBGC. Eliminating lists of information items from the regulation would mean that the information to be reported would be described in the filing instructions only (rather than in both the filing instructions and the regulation).

Mandatory Electronic Filing

PBGC encourages electronic filing under the existing regulation [33] and now proposes to make it mandatory. This proposal is part of PBGC's ongoing implementation of the Government Paperwork Elimination Act.

Electronic filing has become the norm for PBGC's regulated community. Electronic filing is mandatory for reports under ERISA section 4010 (starting with 2005 information years), PBGC premiums (starting with 2007 plan years for all plans), and Form 5500 (starting with 2009 plan years).

PBGC does not currently have a web-based filing application for reportable events as it does for section 4010 or premium filings. However, it has become common for documents to be created electronically in a variety of digital formats (such as WPD, DOC, and XLS) and easy to create electronic images (for example, in PDF format) of documents that do not exist in electronic form. PBGC proposes that filers be permitted to email filings using any one or more of a variety of electronic formats that PBGC is capable of reading as provided in the instructions on PBGC's Web site. (Forms 10 and 10-Advance do not require signatures, and PBGC already accepts imaged signatures for Form 200 filings.) The current versions of PBGC Form 10, Form 10-Advance, and Form 200 are already available in "fillable" format; in connection with the change to electronic filing, new versions of these forms will be available in "fillable" format to facilitate electronic filing.

PBGC would be able to waive electronic filing for voluminous paper documents to relieve filers of the need to scan them, pursuant to § 4043.4(d) (case-by-case waivers).

PBGC would expect its reportable events e-filing methodology to evolve as Internet capabilities and standards change, consistent with resource effectiveness. Such developments would be reflected in PBGC's reportable events e-filing instructions.

PBGC seeks public comment on its proposal to require electronic filing. For example, PBGC would like to know whether there are differences commenters might see between Form 5500 filings and premium filings (which are submitted electronically) and reportable events filings that would make the latter less suited to electronic filing. PBGC would also like to know whether there are particular categories of plans or sponsors that would find electronic filing sufficiently difficult that PBGC should by regulation either exempt them from e-filing (rather than just providing case-by-case exceptions) or defer the applicability of mandatory e-filing to them (*i.e.*, provide for phase-in of the e-filing requirement, and if so, over what period of time). Finally, PBGC seeks comment on e-filing methodology, such as the convenience of submitting documents in the form of data rather than images and the usefulness of pre-filled data fields. Commenters are encouraged to describe actual rather than hypothetical circumstances and to provide comparisons between the burdens that would be associated with e-filing versus paper filing or with one e-filing method versus another. This information will help PBGC evaluate both the appropriateness of e-filing for reportable events in general and the need for special rules to accommodate specific categories of filers.

Other Changes

PBGC's 2009 proposed rule on reportable events would have added two new events to the reportable events regulation. One event would have occurred when a plan's adjusted funding target attainment percentage (AFTAP) was found or presumed to be less than 60 percent. The other event would have occurred when a transfer of $10 million or more was made to a plan's health benefits account under section 420(f) of the Code (as added by PPA 2006) or when plan funding thereafter deteriorated below a prescribed level. Commenters seemed generally accepting of the appropriateness of the former event but questioned the value to PBGC of the latter event. PBGC is not including either event in this proposal. AFTAPs under 60 percent trigger significant restrictions on plans that to some degree provide remediation that serves the same kind of function as the action that PBGC might take upon getting a low AFTAP notice. And PBGC has concluded that its need for health benefit account notices is not great enough to make it clearly appropriate to require them at this time.

PBGC recognizes that the changes made by PPA 2006 in the statutory provisions dealing with missed contributions—which are reportable under §§ 4043.25 and 4043.81—affect the computation of interest on missed contributions, a circumstance that in turn affects the reporting requirements. This proposed rule includes no amendment to the reportable events regulation dealing with such issues, but PBGC is providing guidance on this subject in the filing instructions. The guidance will be revised if and when necessary to take into account as appropriate any relevant guidance from the Internal Revenue Service.

The proposed rule would clarify that if an event is subject to both post-event and advance notice requirements, the notice filed first satisfies both requirements. (In unusual circumstances, the post-event notice required in connection with a transaction may be due before the advance notice required in connection with the same transaction.)

To conform to the statute, the proposed rule would limit the applicability of the confidentiality provisions in ERISA section 4043(f) to submissions under subparts B and C of the reportable events regulation.

The proposed rule would make a number of editorial and clarifying changes to part 4043 and would add definitional cross-references, change statutory cross-references to track changes made by PPA 2006, and update language to conform to usage in PPA 2006 and regulations and reporting requirements thereunder.[34] Where a defined term is used in only one section of the regulation, the definition would be moved from § 4043.2 to the section where the term is used.

The proposed changes to the reportable events regulation make it unnecessary to define a number of terms at the beginning of the regulation. Accordingly, the definitions of "fair market value of the plan's assets," "Form 5500 due date," "public company," "testing date," "ultimate parent," "unfunded vested benefits," "variable-rate premium," and "vested

[33] The existing regulation contains a "partial electronic filing" provision under which a filing is considered timely made if certain basic information (specified in PBGC's reporting instructions) is submitted on time electronically and followed up within one or two business days (depending on the type of report) with the remaining required information. PBGC's mandatory electronic filing proposal would make the "partial electronic filing" provision anachronistic, and it would be removed.

[34] Section 4043.62(b)(1) of the existing regulation, headed "Small plan," provides a waiver where a plan has 500 or fewer participants. The premium payment regulation keys filing due dates to whether a plan is small (fewer than 100 participants, mid-size (100 or more but fewer than 500 participants), or large (500 or more participants). In the interest of uniformity, PBGC proposes to change § 4043.62(b)(1) to provide a waiver where a plan has fewer than 500 participants and to change the heading to read "Small and mid-size plans."

benefits amount'' would be removed from § 4043.2.

Summary Chart

The following table summarizes waiver and safe harbor provisions for reportable events for which post-event reporting is required under the current regulation, the 2009 proposal, and this proposed rule. (As explained in detail above, the current proposal also provides filing relief—like the relief provided by waivers—through changes to the definitions of certain reportable events, including substantial owner distributions and active participant reductions and through the provision of filing extensions such as for active participant reductions that occur by attrition.)

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Events with safe harbors based on company or plan financial soundness[35] or other factors.

Event	Waivers under Current Regulation	Waivers under 2009 Proposal	Revised Proposal – if any of these safe harbors applies, no reporting is required		
			Company Financial Soundness Safe Harbor	Plan Financial Soundness Safe Harbor	Other Safe Harbors
Extraordinary Dividend or Stock Redemption	• Member distributing is de minimis (5%);[36] • Member distributing is non-parent foreign entity (regardless of size); • Member distributing is foreign parent, and distribution is made solely to other controlled group members; • At least 80% funded; • No VRP; or • Less than $1 M in premium underfunding	• Member distributing is de minimis (5%)	↑ Company is financially sound ↓	↑ Plan is financially sound ↓	↑ • Member involved is de minimis (10%); • Member involved is non-parent foreign entity (regardless of size); or • Small plan (fewer than 100 participants) ↓
Change in Contributing Sponsor or Controlled Group	• Member leaving is de minimis (10%); • Member leaving is non-parent foreign entity (regardless of size); • At least 80% funded & public company; • No VRP; or • Less than $1 M in premium underfunding	• Member leaving is de minimis (10%)			
Active Participant Reduction	• Small plan (fewer than 100 participants) • At least 80% funded if not a facility closing; • No VRP; or • Less than $1 M premium underfunding	• Prior event reported within 1 year			• Small plan (fewer than 100 participants) *Note: filing extension for reductions due to gradual attrition*
Transfer of Benefit Liabilities	• IRC 414(l) safe harbor is used for asset transfer; • Plan whose liabilities are all transferred; • Both plans fully funded after transfer using 414(l) assumptions; or • Amount transferred is less than 3% of assets	• None			• Small plan (fewer than 100 participants)
Distribution to Substantial Owner	• At least 80% funded; • No VRP; • Distributions less than IRC 415 limit; or • Distributions less than 1% of assets	• None			• No other safe harbor

[35] Company means the plan sponsor or the U.S. parent company. The proposed financial soundness tests are set forth in § 4043.9 of the proposed regulation and described in the preamble under *Financial Soundness Safe Horbar for Plan Sponsors* and *Financial Soundness Safe Horbar for Plans*.

[36] De minimis is defined in § 4043.2 of both the current regulation and the proposed regulation.

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Events with limited or no safe harbors			
Event	**Waivers under Current Regulation**	**Waivers under 2009 Proposal**	**Safe Harbors under Revised Proposal**
Bankruptcy/ insolvency	• Member in bankruptcy is non-parent foreign entity (regardless of size)	• None	• Event revised to exclude Bankruptcy Code cases. • Member causing event is - – Not the plan sponsor and is de minimis (10%); or – Non-parent foreign entity (regardless of size)
Liquidation	• Member liquidating is de minimis (10%) and plan survives; • Member liquidating is non-parent foreign entity (regardless of size); • At least 80% funded & public company and plan survives; or • No VRP or less than $1 M in premium underfunding and plan survives	• None	• Member causing event is - – Not the plan sponsor and is de minimis (10%); or – Non-parent foreign entity (regardless of size)
Loan Default	• Default cured or waived by lender within 30 days or by end of cure period; • Member defaulting is non-parent foreign entity (regardless of size); • At least 80% funded; or • No VRP or less than $1 M in premium underfunding	• Default cured or waived by lender within 30 days or by end of cure period	
Failure to Make Required Contribution	• Missed quarterlies – Plans with fewer than 25 participants if missed quarterly was not due to financial inability; simplified reporting for plans with 25-99 participants if missed quarterly was not due to financial inability (relief provided in Technical Update) – Any sized plan, if made within 30 days of due date • Any other missed contribution, if made within 30 days of due date	• None	• Missed quarterlies of small plans (fewer than 100 participants) • Any missed contribution, if made within 30 days of due date
Application for Funding Waiver	• None	• None	• None
Inability to Pay Benefits When Due	• Plan with more than 100 participants (subject to liquidity shortfall rules)	• Plan with more than 100 participants (subject to liquidity shortfall rules)	• Plan with more than 100 participants (subject to liquidity shortfall rules)

Other Regulations

Several other PBGC regulations also refer to plan funding concepts using citations outmoded by PPA 2006: The regulations on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000); Terminology (29 CFR part 4001); Variances for Sale of Assets (29 CFR part 4204); Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal (29 CFR part 4206); and Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231). Thus, these regulations must also be revised to be consistent with ERISA and the Code as amended by PPA 2006 and with the revised premium regulations. This proposed rule would make the necessary conforming revisions.

Applicability

PBGC proposes to make the changes to the reportable events regulation in this proposed rule applicable to post-event reports for reportable events occurring on or after January 1, 2014, and to advance reports due on or after that date. Deferral of the applicability date would provide time for plans and plan sponsors to institute any necessary event monitoring programs to comply with the new rules. PBGC is also giving consideration to making the waiver and safe harbor provisions in the final regulation available (in addition to the waivers in the current regulation) during the period from the effective date of the final rule (30 days after publication in the **Federal Register**) to January 1, 2014.

Public Participation

PBGC welcomes comments from the public on all matters relating to the proposed rule. In particular, PBGC seeks public comments on the following specific questions:

(1) What are the advantages and disadvantages of the proposed safe harbor for financially sound plan sponsors?

(2) What are commenters' experiences with commercial credit reporting companies that might be relevant to developing a reportable events safe harbor? Do credit report scores change when reportable events occur? How often or easily are changes in credit report scores provided to users and the public? Can companies obtain timely updates that allow for an accurate assessment of financial soundness at a particular time?

(3) Does the proposal provide an appropriate way to assess financial soundness of plan sponsors? Is a commercial credit report score an appropriate basis for measuring financial strength for purposes of the safe harbor? Does the secured debt test for financial soundness include and exclude appropriate categories of debt from the test criteria? For example, should receivables financing be excluded from the test? Is the net income test too stringent or too lenient? Do the debt service and plan contribution tests include and exclude appropriate events? Are the proposed standards for the sponsor safe harbor too complex?

(4) Regarding the number and stringency of the criteria for the financially sound company safe harbor:

- Should there be more or fewer criteria than the five proposed in this rule? If more, what should the additional ones be? If fewer, which ones should be eliminated?
- Are the relative stringencies of the criteria appropriate for determining company financial soundness?
- Should alternative combinations of a subset of the five criteria be permissible?
- Should financial soundness criteria for companies and plans be combined?

(5) Are there standard, commonly used metrics that could be applied to determine financial soundness that do not rely on third party commercial credit reporting companies (*e.g.*, based on balance sheet or cash-flow ratios, such as current assets to current liabilities, debt to equity, or some form of debt-service to cash-flow ratio)? Would such metrics be available and appropriate for all plan sponsors? What would be the advantages or disadvantages of using such an approach? Are there other alternatives to determining financial soundness?

(6) Should PBGC adopt other standards of creditworthiness?

(7) For the proposed safe harbor via plans, what alternative funding percentage(s) (on a termination basis or premium basis) should be permitted, and why?

(8) Should PBGC provide other alternative waivers? Should such alternatives be in addition to, or in place of, the proposed financial soundness safe harbors for companies and plans?

(9) How can PBGC implement safe harbors, whether based on financial soundness or other factors, in a consistent, transparent, well-defined, and replicable or verifiable way?

In responding to the above questions, to the extent possible, commenters are requested to provide quantitative as well as qualitative support or analysis where applicable.

A public hearing has been scheduled for June 18, 2013, beginning at 2:00 p.m., in the PBGC Training Institute, Washington, DC, shortly after the close of the comment period. Pursuant to building security procedures, visitors must arrive at 1200 K Street not more than 30 minutes before the hearing starts and present government-issued photo identification to enter the building.

PBGC requests that any person who wishes to present oral comments at the hearing file written comments on this proposed rule (see **DATES** and **ADDRESSES** above). Such persons also must submit by June 4, 2013, an outline of topics to be discussed and the amount of time to be devoted to each topic. The outline of topics to be discussed must be submitted by email to *regs.comments@pbgc.gov* or by mail or courier to Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. An agenda identifying the speakers will be prepared after the deadline for receiving outlines. Copies of the agenda will be available free of charge at the hearing.

Regulatory Procedures

Executive Order 12866 "Regulatory Planning and Review" and Executive Order 13563 "Improving Regulation and Regulatory Review"

PBGC has determined, in consultation with the Office of Management and Budget, that this rule is a "significant regulatory action" under Executive Order 12866. The Office of Management and Budget has therefore reviewed this notice under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Orders 12866 and 13563 require a comprehensive regulatory impact analysis be performed for any economically significant regulatory action, defined as an action that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. In accordance with OMB Circular A–4, PBGC has examined

the economic and policy implications of this proposed rule and has concluded that the action's benefits justify its costs.

As discussed above, some reportable events present little or no risk to the pension insurance system—where, for example, the plan sponsor is financially sound and the risk of plan termination low. Reports of such events are unnecessary in the sense that PBGC typically reviews but takes no action on them. PBGC analyzed 2011 records to determine how many such reports it received for events to which the proposed sponsor safe harbor would apply, then reanalyzed the data to see how many unnecessary reports would have been received if the plan sponsor safe harbor in the proposed rule had been in effect (that is, excluding reports that would have been waived under the plan sponsor safe harbor test).[37] It found that the proportion of unnecessary filings would be much lower under the proposed regulation than under the existing regulation—5 percent (10 filings) compared to 42 percent (79 filings). Thus, although the total number of filings may be a little higher under the proposed rule, the proportion of unnecessary reports, and the regulatory burden on financially sound sponsors and plans, would be dramatically reduced.

Under Section 3(f)(1) of Executive Order 12866, a regulatory action is economically significant if "it is likely to result in a rule that may * * * [h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." PBGC has determined that this proposed rule does not cross the $100 million threshold for economic significance and is not otherwise economically significant.

This action is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review[38] issued in accordance with Executive Order 13563 on "Improving Regulation and Regulatory Review."

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to the proposed amendments to the reportable events regulation, PBGC considers a small entity to be a plan with fewer than 100 participants. This is the same criterion used to determine the availability of the "small plan" waiver under the proposal, and is consistent with certain requirements in Title I of ERISA[39] and the Internal Revenue Code,[40] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[41] Using this proposed definition, about 64 percent (16,700 of 26,100) of plans covered by Title IV of ERISA in 2010 were small plans.[42]

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the proposal on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact on small entities of the proposed amendments to the reportable events regulation.

On the basis of its proposed definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 do not apply. This certification is based on the fact that the reportable events regulation requires only the filing of one-time notices on the occurrence of unusual events that affect only certain plans and that the economic impact of filing is not significant. The average burden of submitting a notice—based on the estimates discussed under *Paperwork Reduction Act*, below—is less than 5½ hours and $800 (virtually the same as under the current regulation). PBGC invites public comment on this burden estimate.

Paperwork Reduction Act

PBGC is submitting the information requirements under this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. There are two information collections under the reportable events regulation, approved under OMB control number 1212–0013 (covering subparts B and C) and OMB control number 1212–0041 (covering subpart D), both of which expire March 31, 2015. Copies of PBGC's requests may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW., Washington, DC 20005, 202–326–4040.

PBGC is proposing the following changes to these information requirements:

- PBGC's experience is that in order to assess the significance of virtually every post-event filing for a missed contribution, inability to pay benefits, loan default, liquidation, or insolvency, it must obtain from the filer certain actuarial, financial, and controlled group information. Filers are currently required to submit some of this information for some events, but PBGC wants to make its information collection for all these events more uniform. Accordingly, PBGC proposes to require that every post-event filing for one of these events include these items (except that financial information is unnecessary for reports of insolvency because PBGC can typically obtain most of the information from court records). Actuarial information would no longer have to be submitted with post-event notices of other events. (1) The actuarial information required would be a copy of the most recent actuarial valuation report for the plan, a statement of

[37] Filings that involve section 4062(e) events always result in the opening of cases and were excluded from the analysis.

[38] See *www.pbgc.gov/documents/plan-for-regulatory-review.pdf.*

[39] See, *e.g.*, ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[40] See, *e.g.*, Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[41] See, *e.g.*, DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,637, 66,644 (Oct. 27, 2011).

[42] See PBGC 2010 pension insurance data table S–31, *http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.*

subsequent material changes, and the most recent month-end market value of plan assets. (2) The financial information required would be copies of audited financial statements for the most recent fiscal year. (If audited statements were not immediately available, copies of unaudited financial statements (if available) or tax returns would be required, to be followed up with required financial statements when available.) (3) The controlled group information required would be tailored to the event being reported and would generally include identifying information for each plan maintained by any member of the controlled group, a description of the controlled group with members' names, and the status of members (for example, liquidating or in bankruptcy).

- Similarly, PBGC has found that it needs the same actuarial, financial, and controlled group information for advance-notice filings. For notices of funding waiver requests, the information can typically be gleaned from the copy of the request that accompanies the reportable event notice. And financial information is unnecessary for reports of insolvency because PBGC can typically obtain most of the information from court records. With these exceptions, PBGC proposes to require that every advance notice filing include these items.
- Controlled group changes and benefit liability transfers involve both an "old" controlled group and a "new" controlled group. PBGC already requires submission of controlled group information with notices of controlled group changes, and now proposes to do the same for benefit liability transfers.
- Because extraordinary distributions raise questions about controlled group finances, PBGC proposes to require submission of financial information with notices of events of this type.
- Inability to pay benefits and liquidation both raise the specter of imminent sponsor shutdown and plan termination. Accordingly, for notices of these two events (including advance notices of liquidation events), PBGC proposes to require submission of copies of the most recent plan documents and IRS qualification letter, the date or expected date of shutdown, and the identity of the plan actuary if different from the actuary reported on the most recent Form 5500 Schedule SB. Plan documents would no longer be required with notices for other events.
- PBGC proposes to require email addresses for plan administrators, sponsors, and designated contact persons.
- PBGC proposes to require that both post-event and advance report filings state explicitly the date of the event or the actual or anticipated effective date of the event (as applicable). This requirement will avoid the potential for confusion or ambiguity in the description of the event regarding this date.
- PBGC has found that it often does not need the actuarial valuation report that must currently be included with notice of a substantial owner distribution and thus proposes to eliminate that requirement. However, PBGC proposes to add a requirement that notices of this event give the reason for the distribution to help PBGC analyze its significance.
- For both post-event and advance notices of loan defaults, PBGC proposes to require that any cross-defaults or anticipated cross-defaults be described.
- PBGC has found that some filers that should file Form 200 under § 4043.81 of the reportable events regulation (missed contributions totaling over $1 million) file only Form 10 under § 4043.25 (missed contributions of any amount). This has led to delays in enforcing liens under ERISA section 302(f) and Code section 412(n) (corresponding to ERISA section 303(k) and Code section 430(k) as amended by PPA 2006). To address this issue, PBGC proposes that Form 10 filings for missed contributions include the amount and date of all missed contributions since the most recent Schedule SB.
- PBGC proposes to eliminate Form 200 information submission requirements for documents that PBGC typically can now obtain timely on its own and to add new information submission requirements to help it analyze the seriousness of the plan's status and perfect statutory liens triggered by large missed contributions. Documentation to be eliminated would be copies of Form 5500 Schedule SB, SEC filings, and documents connected with insolvency, liquidation, receivership, and similar proceedings. New information to be required would be a statement of material changes in liabilities since the most recent actuarial valuation report, most recent month-end market value of plan assets, description of each controlled group member's status (for example, liquidating or in bankruptcy), information about all controlled group real property, and identity of controlled group head offices.
- PBGC Form 10 currently requires for the bankruptcy/insolvency event that the bankruptcy petition and docket (or similar documents) be submitted. Form 10-Advance requires that all documents filed in the relevant proceeding be submitted. Both forms require that the last date for filing claims be reported if known. PBGC proposes to replace these requirements with a requirement that filers simply identify the court where the insolvency proceeding was filed or will be filed and the docket number of the filing (if known).

PBGC needs the information in reportable events filings under subparts B and C of part 4043 (Forms 10 and 10-Advance) to determine whether it should terminate plans that experience events that indicate plan or contributing sponsor financial problems. PBGC estimates that it will receive such filings from about 1,085 respondents each year and that the total annual burden of the collection of information will be about 5,744 hours and $857,195. This represents a burden comparable to that under the existing regulation, as the following table shows:

Annual burden:	Under existing regulation:	Under proposed rule:
Number of responses	1,026	1,085.
Hour burden	5,400 hours	5,744 hours.
Dollar burden	$821,826	$857,195.

As discussed above, however, the proposal is designed to reduce burden dramatically on financially sound plans and sponsors (which present a low degree of risk); thus, burden under the proposed rule would be substantially associated with higher-risk events, which are much more likely to deserve PBGC's attention. PBGC separately estimated the average burden changes for low-risk and high-risk entities. The burden for low-risk sponsors would go down from 417 hours and $121,725 to zero. The burden for high-risk sponsors

would go up by approximately 760 hours and $157,100.

Low-risk	Volume	Hours	Cost
Current	144	417	$121,725
Proposed	0	0	$0
Change	(144)	(417)	(121,725)

High-risk	Volume	Hours	Cost
Current	882	4,983	$700,101
Proposed	1,085	5,744	857,195
Change	203	761	157,094

PBGC needs the information in missed contribution filings under subpart D of part 4043 (Form 200) to determine the amounts of statutory liens arising under ERISA section 303(k) and Code section 430(k) and to evaluate the funding status of plans with respect to which such liens arise and the financial condition of the persons responsible for their funding. PBGC estimates that it will receive such filings from about 136 respondents each year and that the total annual burden of the collection of information will be about 816 hours and $125,000.[43]

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Although comments may be submitted through June 3, 2013, the Office of Management and Budget requests that comments be received on or before May 3, 2013 to ensure their consideration. Comments may address (among other things)—

- Whether each proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of each proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of each 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.

[43] In comparison, PBGC's most recent annual burden estimate for this information collection was 110 responses, 670 hours, and $102,000.

List of Subjects

29 CFR Part 4000

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4001

Employee benefit plans, Pension insurance.

29 CFR Part 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4204

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4206

Employee benefit plans, Pension insurance.

29 CFR Part 4231

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

■ For the reasons given above, PBGC proposes to amend 29 CFR parts 4000, 4001, 4043, 4204, 4206, and 4231 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 is revised to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3).

■ 2. In § 4000.3, new paragraph (b)(3) is added to read as follows:

§ 4000.3 What methods of filing may I use?

* * * * *

(b) * * *

(3) You must file notices under part 4043 of this chapter electronically in accordance with the instructions on PBGC's Web site, except as otherwise provided by PBGC.

* * * * *

■ 3. In § 4000.53, paragraphs (c) and (d) are amended by removing the words "section 302(f)(4), section 307(e), or" where they occur in each paragraph and adding in their place the words "section 101(f), section 303(k)(4), or".

PART 4001—TERMINOLOGY

■ 4. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 5. In § 4001.2:

■ a. The definition of "controlled group" is amended by removing the words "section 412(c)(11)(B) of the Code or section 302(c)(11)(B) of ERISA" and adding in their place the words "section 412(b)(2) of the Code or section 302(b)(2) of ERISA".

■ b. The definition of "funding standard account" is amended by removing the words "section 302(b) of ERISA or section 412(b) of the Code" and adding in their place the words "section 304(b) of ERISA or section 431(b) of the Code".

■ c. The definition of "substantial owner" is amended by removing the words "section 4022(b)(5)(A)" and adding in their place the words "section 4021(d)".

■ 6. Part 4043 is revised to read as follows:

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

Subpart A—General Provisions

Sec.

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 303(k)(4) of ERISA or section 430(k)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying PBGC of a failure to make certain required contributions.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multiemployer plan, PBGC, person, plan, plan administrator, plan year, single-employer plan, and substantial owner.

In addition, for purposes of this part:

De minimis 10-percent segment means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 10 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greater of—

(i) 10 percent of the controlled group's annual operating income; or

(ii) $5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) $5 million.

De minimis 5-percent segment has the same meaning as *de minimis* 10-percent segment, except that "5 percent" is substituted for "10 percent" each time it appears.

Event year means the plan year in which a reportable event occurs.

Financially sound has the meaning described in § 4043.9.

Foreign entity means a member of a controlled group that—

(1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the date the reportable event occurs, meets one of the following tests—

(i) Is not required to file any United States federal income tax form;

(ii) Has no income reportable on any United States federal income tax form other than passive income not exceeding $1,000; or

(iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States tax returns for employee withholding.

Foreign parent means a foreign entity that is a direct or indirect parent of a person that is a contributing sponsor of a plan.

Notice date means the deadline (including extensions) for filing notice of a reportable event with PBGC.

Participant means a participant as defined in § 4006.2 of this chapter.

U.S. entity means an entity subject to the personal jurisdiction of the U.S. district court.

§ 4043.3 Requirement of notice.

(a) *Obligation to file*—(1) *In general.* Each person that is required to file a notice under this part, or a duly authorized representative, must submit the information required under this part by the time specified in § 4043.20 (for post-event notice), § 4043.61 (for advance notice), or § 4043.81 (for Form 200 filings). Any information filed with PBGC in connection with another matter may be incorporated by reference. If an event is subject to both post-event and advance notice requirements, the notice filed first satisfies both filing requirements.

(2) *Multiple plans.* If a reportable event occurs for more than one plan, the filing obligation with respect to each plan is independent of the filing obligation with respect to any other plan.

(3) *Optional consolidated filing.* A filing of a notice with respect to a reportable event by any person required to file will be deemed to be a filing by all persons required to give PBGC notice of the event under this part. If notices are required for two or more events, the notices may be combined in one filing.

(b) *Contents of reportable event notice.* A person required to file a reportable event notice under subpart B or C of this part must file, by the notice date, the form specified by PBGC for that purpose, with the information specified in PBGC's reportable events instructions.

(c) *Reportable event forms and instructions.* PBGC will issue reportable events forms and instructions and make them available on its Web site (*www.pbgc.gov*).

(d) *Requests for additional information.* PBGC may, in any case, require the submission of additional relevant information not specified in its forms and instructions. Any such information must be submitted for subpart B of this part within 30 days, and for subpart C or D of this part within 7 days, after the date of a written request by PBGC, or within a different time period specified therein. PBGC may in its discretion shorten the time period where it determines that the interests of PBGC or participants may be prejudiced by a delay in receipt of the information.

(e) *Effect of failure to file.* If a notice (or any other information required under this part) is not provided within the specified time limit, PBGC may assess against each person required to provide the notice a separate penalty under section 4071 of ERISA. PBGC may pursue any other equitable or legal remedies available to it under the law.

§ 4043.4 Waivers and extensions.

(a) *Waivers and extensions—in general.* PBGC may extend any deadline or waive any other requirement under this part where it finds convincing evidence that the waiver or extension is appropriate under the circumstances. Any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed with PBGC in writing (which may be in electronic form) and must state the facts and circumstances on which the request is based.

(b) *Waivers and extensions—specific events.* For some reportable events, automatic waivers from reporting and information requirements and extensions of time are provided in subparts B and C of this part. If an occurrence constitutes two or more reportable events, reporting requirements for each event are determined independently. For example, reporting is automatically waived for an occurrence that constitutes a reportable event under more than one section only if the requirements for an automatic waiver under each section are satisfied.

(c) *Multiemployer plans.* The requirements of section 4043 of ERISA are waived with respect to multiemployer plans.

(d) *Terminating plans.* No notice is required from the plan administrator or contributing sponsor of a plan if the notice date is on or after the date on which—

(1) All of the plan's assets (other than any excess assets) are distributed pursuant to a termination under part 4041 of this chapter; or

(2) A trustee is appointed for the plan under section 4042(c) of ERISA.

§ 4043.5 How and where to file.

Reportable event notices required under this part must be filed electronically using the forms and in accordance with the instructions promulgated by PBGC, which are posted on PBGC's Web site. Filing guidance is provided by the instructions and by subpart A of part 4000 of this chapter.

§ 4043.6 Date of filing.

(a) *Post-event notice filings.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under subpart B of this part was filed with PBGC.

(b) *Advance notice and Form 200 filings.* Information filed under subpart C or D of this part is treated as filed on the date it is received by PBGC. Subpart C of part 4000 of this chapter provides rules for determining when PBGC receives a submission.

§ 4043.7 Computation of time.

PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

§ 4043.8 Confidentiality.

In accordance with section 4043(f) of ERISA and § 4901.21(a)(3) of this chapter, any information or documentary material that is not publicly available and is submitted to PBGC pursuant to subpart B or C of this part will not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

§ 4043.9 Financial soundness.

(a) *In general.* The term "financially sound" is defined in paragraph (b) of this section for an entity that is a plan sponsor or member of a plan sponsor's controlled group and in paragraph (c) of this section for a plan.

(b) *Financially sound sponsor or controlled group member.* For purposes of this part, an entity that is a plan sponsor or member of a plan sponsor's controlled group is "financially sound" as of any date (the determination date) if on the determination date it has adequate capacity to meet its obligations in full and on time as evidenced by its satisfaction of all of the five criteria described in paragraphs (b)(1) through (b)(5) of this section.

(1) The entity is scored by a commercial credit reporting company that is commonly used in the business community, and the score indicates a low likelihood that the entity will default on its obligations.

(2) The entity has no secured debt, disregarding leases or debt incurred to acquire or improve property and secured only by that property.

(3) For the most recent two fiscal years, the entity has positive net income under generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS). For purposes of this provision, net income of a tax-exempt entity is the excess of total revenue over total expenses as required to be reported on Internal Revenue Service Form 990.

(4) For the two-year period ending on the determination date, no event described in § 4043.34(a)(1) or (2) (dealing with a default on loan with an outstanding balance of $10 million or more) has occurred with respect to any loan to the entity, regardless of whether reporting was waived under § 4043.34(c).

(5) For the two-year period ending on the determination date, the entity has not failed to make when due any contribution described in § 4043.25(a)(1) or (2) (dealing with failure to make required minimum funding payments), unless reporting is waived under § 4043.25(c) for failure to make the contribution.

(c) *Financially sound plan.* For purposes of this part, "financially sound" means, with respect to a plan for a plan year, that the plan meets the requirements of either paragraph (c)(1) or paragraph (c)(2) of this section.

(1) A plan meets the requirements of this paragraph (c)(1) if, as of the last day of the prior plan year, the plan had no unfunded benefit liabilities (within the meaning of section 4062(b)(1)(A) of ERISA) as determined in accordance with §§ 4044.51 through 4044.57 of this chapter (dealing with valuation of benefits and assets in trusteed terminating plans) and § 4010.8(d)(1)(ii) of this chapter.

(2) A plan meets the requirements of this paragraph (c)(2) if for the prior plan year, the ratio of the value of the plan's assets as determined for premium purposes in accordance with part 4006 of this chapter to the amount of the plan's premium funding target as so determined was not less than 120 percent.

Subpart B—Post-Event Notice of Reportable Events

§ 4043.20 Post-event filing obligation.

(a) *In general.* The plan administrator and each contributing sponsor of a plan for which a reportable event under this subpart has occurred are required to notify PBGC within 30 days after that person knows or has reason to know that the reportable event has occurred, unless a waiver or extension applies. If there is a change in plan administrator or contributing sponsor, the reporting obligation applies to the person who is the plan administrator or contributing sponsor of the plan on the 30th day after the reportable event occurs.

(b) *Extension for certain events.* For the events described in §§ 4043.23, 4043.27, 4043.29, 4043.31, and 4043.32, if the plan's premium due date for the plan year preceding the event year was determined under § 4007.11(a)(1) (dealing with small plans) or § 4007.11(c) (dealing with new and newly covered plans) of this chapter, the notice date is extended until the last day of the seventeenth full calendar month that began on or after the first day of such preceding plan year (the effective date, in the case of a new plan).

§ 4043.21 Tax disqualification and Title I noncompliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA, or when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waiver.* Notice is waived for this event.

§ 4043.22 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waiver.* Notice is waived for this event.

§ 4043.23 Active participant reduction.

(a) *Reportable event.* A reportable event occurs:

(1) *Single-cause event.* When the reductions in the number of active participants under a plan due to a single cause—such as a reorganization, the discontinuance of an operation, a natural disaster, a mass layoff, or an early retirement incentive program—are more than 20 percent of the number of active participants at the beginning of the plan year or more than 25 percent of the number of active participants at the beginning of the previous plan year.

(2) *Short-period event.* When the reductions in the number of active participants under a plan over a short period (disregarding reductions reported under paragraph (a)(1) of this section) are more than 20 percent of the number of active participants at the beginning of the plan year, or more than 25 percent of the number of active participants at the beginning of the previous plan year. For this purpose, a short period is a period of 30 days or less that does not include any part of a prior short period for which an active participant reduction is reported under this section.

(3) *Attrition event.* On the last day of a plan year if the number of active participants under a plan are reduced by more than 20 percent of the number of active participants at the beginning of the plan year, or by more than 25 percent of the number of active participants at the beginning of the previous plan year. The reduction may be measured by using the number of active participants on either the last day of the plan year or the participant count date (as defined in § 4006.2 of this chapter) for the next plan year, but in either case is considered to occur on the last day of the plan year.

(b) *Determination rules*—(1) *Determination dates.* The number of active participants at the beginning of a plan year may be determined by using the number of active participants at the end of the previous plan year.

(2) *Active participant.* "Active participant" means a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

(3) *Employment relationship.* The employment relationship referred to in this paragraph (b) is between the participant and all members of the plan's controlled group.

(c) *Reductions due to cessations and withdrawals.* For purposes of paragraphs (a)(1) and (a)(2) of this section, a reduction in the number of active participants is to be disregarded to the extent that it—

(1) Is attributable to an event described in ERISA section 4062(e) or 4063(a), and

(2) Is timely reported to PBGC under ERISA section 4063(a).

(d) *Waivers*—(1) *Current-year small plan.* Notice under this section is waived if the plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *Financial soundness.* Notice under this section is waived if—

(i) For each contributing sponsor of the plan, either the sponsor or the sponsor's highest level controlled group parent that is a U.S. entity is financially sound when the event occurs, or

(ii) The plan is financially sound for the plan year in which the event occurs.

(e) *Extension—attrition event.* For an event described in paragraph (a)(3) of this section, the notice date is extended until 120 days after the end of the event year.

§ 4043.24 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waiver.* Notice is waived for this event.

§ 4043.25 Failure to make required minimum funding payment.

(a) *Reportable event.* A reportable event occurs when—

(1) A contribution required under sections 302 and 303 of ERISA or sections 412 and 430 of the Code is not made by the due date for the payment under ERISA section 303(j) or Code section 430(j), or

(2) Any other contribution required as a condition of a funding waiver is not made when due.

(b) *Alternative method of compliance—Form 200 filed.* If, with respect to the same failure, a filing is made in accordance with § 4043.81, that filing satisfies the requirements of this section.

(c) *Waivers*—(1) *Current-year small plan.* Notice under this section is waived with respect to a failure to make a required quarterly contribution under section 303(j)(3) of ERISA or section 430(j)(3) of the Code if the plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *30-day grace period.* Notice under this section is waived if the missed contribution is made by the 30th day after its due date.

§ 4043.26 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is currently unable or projected to be unable to pay benefits.

(1) *Current inability.* A plan is currently unable to pay benefits if it fails to provide any participant or beneficiary the full benefits to which the person is entitled under the terms of the plan, at the time the benefit is due and in the form in which it is due. A plan is not treated as being currently unable to pay benefits if its failure to pay is caused solely by—

(i) A limitation under section 436 of the Code and section 206(g) of ERISA (dealing with funding-based limits on benefits and benefit accruals under single-employer plans), or

(ii) The need to verify a person's eligibility for benefits; the inability to locate a person; or any other administrative delay if the delay is for less than the shorter of two months or two full benefit payment periods.

(2) *Projected inability.* A plan is projected to be unable to pay benefits when, as of the last day of any quarter of a plan year, the plan's "liquid assets" are less than two times the amount of the "disbursements from the plan" for such quarter. "Liquid assets" and "disbursements from the plan" have the same meaning as under section

303(j)(4)(E) of ERISA and section 430(j)(4)(E) of the Code.

(b) *Waiver—plans subject to liquidity shortfall rules.* Notice under this section is waived unless the reportable event occurs during a plan year for which the plan is exempt from the liquidity shortfall rules in section 303(j)(4) of ERISA and section 430(j)(4) of the Code because it is described in section 303(g)(2)(B) of ERISA and section 430(g)(2)(B) of the Code.

§ 4043.27 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs for a plan when—

(1) There is a distribution to a substantial owner of a contributing sponsor of the plan;

(2) The total of all distributions made to the substantial owner within the one-year period ending with the date of such distribution exceeds $10,000;

(3) The distribution is not made by reason of the substantial owner's death;

(4) Immediately after the distribution, the plan has nonforfeitable benefits (as provided in § 4022.5 of this chapter) that are not funded; and

(5) Either—

(i) The sum of the values of all distributions to any one substantial owner within the one-year period ending with the date of the distribution is more than one percent of the end-of-year total amount of the plan's assets (as required to be reported on Schedule H or Schedule I to Form 5500) for each of the two plan years immediately preceding the event year, or

(ii) The sum of the values of all distributions to all substantial owners within the one-year period ending with the date of the distribution is more than five percent of the end-of-year total amount of the plan's assets (as required to be reported on Schedule H or Schedule I to Form 5500) for each of the two plan years immediately preceding the event year.

(b) *Determination rules*—(1) *Valuation of distribution.* The value of a distribution under this section is the sum of—

(i) The cash amounts actually received by the substantial owner;

(ii) The purchase price of any irrevocable commitment; and

(iii) The fair market value of any other assets distributed, determined as of the date of distribution to the substantial owner.

(2) *Date of substantial owner distribution.* The date of distribution to a substantial owner of a cash distribution is the date it is received by the substantial owner. The date of distribution to a substantial owner of an irrevocable commitment is the date on which the obligation to provide benefits passes from the plan to the insurer. The date of any other distribution to a substantial owner is the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

(3) *Determination date.* The determination of whether a participant is (or has been in the preceding 60 months) a substantial owner is made on the date when there has been a distribution that would be reportable under this section if made to a substantial owner.

(c) *Alternative method of compliance—non-increasing annuity.* In the case of a non-increasing annuity for a substantial owner, a filing that satisfies the requirements of this section with respect to any payment under the annuity and that discloses the period, periodic amount, and duration of the annuity satisfies the requirements of this section with respect to all subsequent payments under the annuity.

(d) *Waivers—financial soundness.* Notice under this section is waived if—

(1) For each contributing sponsor of the plan, either the sponsor or the sponsor's highest level controlled group parent that is a U.S. entity is financially sound when the event occurs, or

(2) The plan is financially sound for the plan year in which the event occurs.

§ 4043.28 Plan merger, consolidation or transfer.

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(*l*) of the Code.

(b) *Waiver.* Notice under this section is waived for this event. However, notice may be required under § 4043.29 (for a controlled group change) or § 4043.32 (for a transfer of benefit liabilities).

§ 4043.29 Change in contributing sponsor or controlled group.

(a) *Reportable event.* A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons ceasing to be members of the plan's controlled group. For purposes of this section, the term "transaction" includes, but is not limited to, a legally binding agreement, whether or not written, to transfer ownership, an actual transfer of ownership, and an actual change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights. Whether an agreement is legally binding is to be determined without regard to any conditions in the agreement. A transaction is not reportable if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

(b) *Waivers*—(1) De minimis *10-percent segment.* Notice under this section is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

(3) *Current-year small plan.* Notice under this section is waived if the plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(4) *Financial soundness.* Notice under this section is waived if—

(i) For each post-event contributing sponsor of the plan, either the sponsor or the sponsor's highest level controlled group parent that is a U.S. entity is financially sound when the event occurs, or

(ii) The plan is financially sound for the plan year in which the event occurs.

(c) *Examples.* The following examples assume that no waiver applies.

(1) *Controlled group breakup.* Plan A's controlled group consists of Company A (its contributing sponsor), Company B (which maintains Plan B), and Company C. As a result of a transaction, the controlled group will break into two separate controlled groups—one segment consisting of Company A and the other segment consisting of Companies B and C. Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report that Companies B and C will leave Plan A's controlled group. Company B (Plan B's contributing sponsor) and the plan administrator of Plan B are required to report that Company A will leave Plan B's controlled group. Company C is not required to report because it is not a contributing sponsor or a plan administrator.

(2) *Change in contributing sponsor.* Plan Q is maintained by Company Q. Company Q enters into a binding contract to sell a portion of its assets and to transfer employees participating in Plan Q, along with Plan Q, to Company R, which is not a member of Company Q's controlled group. There

will be no change in the structure of Company Q's controlled group. On the effective date of the sale, Company R will become the contributing sponsor of Plan Q. A reportable event occurs on the date of the transaction (*i.e.*, the binding contract), because as a result of the transaction, Company Q (and any other member of its controlled group) will cease to be a member of Plan Q's controlled group. If, on the 30th day after Company Q and Company R enter into the binding contract, the change in the contributing sponsor has not yet become effective, Company Q has the reporting obligation. If the change in the contributing sponsor has become effective by the 30th day, Company R has the reporting obligation.

§ 4043.30 Liquidation.

(a) *Reportable event.* A reportable event occurs for a plan when a member of the plan's controlled group—

(1) Is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member);

(2) Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or

(3) Liquidates in a case under the Bankruptcy Code, or under any similar law.

(b) *Waivers*—(1) De minimis *10-percent segment.* Notice under this section is waived if the person or persons that liquidate do not include any contributing sponsor of the plan and represent a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if each person that liquidates is a foreign entity other than a foreign parent.

§ 4043.31 Extraordinary dividend or stock redemption.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group declares a dividend or redeems its own stock and the amount or net value of the distribution, when combined with other such distributions during the same fiscal year of the person, exceeds the person's net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles, for the prior fiscal year. A distribution by a person to a member of its controlled group is disregarded.

(b) *Determination rules.* For purposes of paragraph (a) of this section, the net value of a non-cash distribution is the fair market value of assets transferred by the person making the distribution, reduced by the fair market value of any liabilities assumed or consideration given by the recipient in connection with the distribution. Net value determinations should be based on readily available fair market value(s) or independent appraisal(s) performed within one year before the distribution is made. To the extent that fair market values are not readily available and no such appraisals exist, the fair market value of an asset transferred in connection with a distribution or a liability assumed by a recipient of a distribution is deemed to be equal to 200 percent of the book value of the asset or liability on the books of the person making the distribution. Stock redeemed is deemed to have no value.

(c) *Waivers*—(1) *Extraordinary dividends and stock redemptions.* Notice under this section of the reportable event described in section 4043(c)(11) of ERISA related to extraordinary dividends and stock redemptions is waived except to the extent reporting is required under this section.

(2) De minimis *10-percent segment.* Notice under this section is waived if the person making the distribution is a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(3) *Foreign entity.* Notice under this section is waived if the person making the distribution is a foreign entity other than a foreign parent.

(4) *Current-year small plan.* Notice under this section is waived if the plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(5) *Financial soundness.* Notice under this section is waived if—

(i) For each contributing sponsor of the plan, either the sponsor or the sponsor's highest level controlled group parent that is a U.S. entity is financially sound when the event occurs, or

(ii) The plan is financially sound for the plan year in which the event occurs.

§ 4043.32 Transfer of benefit liabilities.

(a) *Reportable event.* A reportable event occurs for a plan when—

(1) The plan makes a transfer of benefit liabilities to a person, or to a plan or plans maintained by a person or persons, that are not members of the transferor plan's controlled group; and

(2) The amount of benefit liabilities transferred, in conjunction with other benefit liabilities transferred during the 12-month period ending on the date of the transfer, is 3 percent or more of the plan's total benefit liabilities. Both the benefit liabilities transferred and the plan's total benefit liabilities are to be valued as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with section 414(*l*) of the Code.

(b) *Determination rules*—(1) *Date of transfer.* The date of transfer is to be determined on the basis of the facts and circumstances of the particular situation. For transfers subject to the requirements of section 414(*l*) of the Code, the date determined in accordance with 26 CFR 1.414(*l*)–1(b)(11) will be considered the date of transfer.

(2) *Distributions of lump sums and annuities.* For purposes of paragraph (a) of this section, the payment of a lump sum, or purchase of an irrevocable commitment to provide an annuity, in satisfaction of benefit liabilities is not a transfer of benefit liabilities.

(c) *Waivers*—(1) *Current-year small plan.* Notice under this section is waived if the plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *Financial soundness.* Notice under this section is waived if, for both the transferor plan (if it survives the transfer) and the transferee plan—

(i) For each contributing sponsor of the plan, either the sponsor or the sponsor's highest level controlled group parent that is a U.S. entity is financially sound when the transfer occurs, or

(ii) The plan is financially sound for the plan year in which the transfer occurs.

§ 4043.33 Application for minimum funding waiver.

A reportable event for a plan occurs when an application for a minimum funding waiver for the plan is submitted under section 302(c) of ERISA or section 412(c) of the Code.

§ 4043.34 Loan default.

(a) *Reportable event.* A reportable event occurs for a plan when, with respect to a loan with an outstanding balance of $10 million or more to a member of the plan's controlled group—

(1) There is an acceleration of payment or a default under the loan agreement, or

(2) The lender waives or agrees to an amendment of any covenant in the loan agreement for the purpose of avoiding a default.

(b) *Notice date.* The notice date is 30 days after the person required to report knows or has reason to know of an acceleration or default under paragraph

(a)(1) of this section, without regard to the time of any other conditions required for the acceleration or default to be reportable.

(c) *Waivers*—(1) De minimis *10-percent segment.* Notice under this section is waived if the debtor is not a contributing sponsor of the plan and represents a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if the debtor is a foreign entity other than a foreign parent.

§ 4043.35 Insolvency or similar settlement.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group—

(1) Commences or has commenced against it any insolvency proceeding (including, but not limited to, the appointment of a receiver) other than a bankruptcy case under the Bankruptcy Code;

(2) Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;

(3) Executes a general assignment for the benefit of creditors; or

(4) Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.

(b) *Waivers*—(1) De minimis *10-percent segment.* Notice under this section is waived if the person described in paragraph (a) of this section is not a contributing sponsor of the plan and represents a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if the person described in paragraph (a) of this section is a foreign entity other than a foreign parent.

Subpart C—Advance Notice of Reportable Events

§ 4043.61 Advance reporting filing obligation.

(a) *In general.* Unless a waiver or extension applies with respect to the plan, each contributing sponsor of a plan is required to notify PBGC no later than 30 days before the effective date of a reportable event described in this subpart C if the contributing sponsor is subject to advance reporting for the reportable event. If there is a change in contributing sponsor, the reporting obligation applies to the person who is the contributing sponsor of the plan on the notice date.

(b) *Persons subject to advance reporting.* A contributing sponsor of a plan is subject to the advance reporting requirement under paragraph (a) of this section for a reportable event if—

(1) On the notice date, neither the contributing sponsor nor any member of the plan's controlled group to which the event relates is a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements; and

(2) The aggregate unfunded vested benefits, determined in accordance with paragraph (c) of this section, are more than $50 million; and

(3) The aggregate value of plan assets, determined in accordance with paragraph (c) of this section, is less than 90 percent of the aggregate premium funding target, determined in accordance with paragraph (c) of this section.

(c) *Funding determinations.* For purposes of paragraph (b) of this section, the aggregate unfunded vested benefits, aggregate value of plan assets, and aggregate premium funding target are determined by aggregating the unfunded vested benefits, values of plan assets, and premium funding targets (respectively), as determined for premium purposes in accordance with part 4006 of this chapter for the plan year preceding the effective date of the event, of plans maintained (on the notice date) by the contributing sponsor and any members of the contributing sponsor's controlled group, disregarding plans with no unfunded vested benefits (as so determined).

(d) *Shortening of 30-day period.* Pursuant to § 4043.3(d), PBGC may, upon review of an advance notice, shorten the notice period to allow for an earlier effective date.

§ 4043.62 Change in contributing sponsor or controlled group.

(a) *Reportable event.* Advance notice is required for a change in a plan's contributing sponsor or controlled group, as described in § 4043.29(a).

(b) *Waivers*—(1) *Small and mid-size plans.* Notice under this section is waived with respect to a change of contributing sponsor if the transferred plan has fewer than 500 participants.

(2) De minimis *5-percent segment.* Notice under this section is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 5-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.63 Liquidation.

(a) *Reportable event.* Advance notice is required for a liquidation of a member of a plan's controlled group, as described in § 4043.30.

(b) *Waiver*—de minimis *5-percent segment and ongoing plans.* Notice under this section is waived if the person that liquidates is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event, and each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group.

§ 4043.64 Extraordinary dividend or stock redemption.

(a) *Reportable event.* Advance notice is required for a distribution by a member of a plan's controlled group, as described in § 4043.31(a).

(b) *Waiver*—de minimis *5-percent segment.* Notice under this section is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.65 Transfer of benefit liabilities.

(a) *Reportable event.* Advance notice is required for a transfer of benefit liabilities, as described in § 4043.32(a).

(b) *Waivers*—(1) *Complete plan transfer.* Notice under this section is waived if the transfer is a transfer of all of the transferor plan's benefit liabilities and assets to one other plan.

(2) *Transfer of less than 3 percent of assets.* Notice under this section is waived if the value of the assets being transferred—

(i) Equals the present value of the accrued benefits (whether or not vested) being transferred, using actuarial assumptions that comply with section 414(*l*) of the Code; and

(ii) In conjunction with other assets transferred during the same plan year, is less than 3 percent of the assets of the transferor plan as of at least one day in that year.

(3) *Section 414(l) safe harbor.* Notice under this section is waived if the benefit liabilities of 500 or fewer participants are transferred and the transfer complies with section 414(*l*) of the Code using the actuarial assumptions prescribed for valuing benefits in trusteed plans under § 4044.51–57 of this chapter.

(4) *Fully funded plans.* Notice under this section is waived if the transfer complies with section 414(*l*) of the Code using reasonable actuarial assumptions and, after the transfer, the transferor and transferee plans are fully funded as determined in accordance with §§ 4044.51 through 4044.57 of this chapter (dealing with valuation of benefits and assets in trusteed terminating plans) and § 4010.8(d)(1)(ii) of this chapter.

§ 4043.66 Application for minimum funding waiver.

(a) *Reportable event.* Advance notice is required for an application for a minimum funding waiver, as described in § 4043.33.

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

§ 4043.67 Loan default.

Advance notice is required for an acceleration of payment, a default, a waiver, or an agreement to an amendment with respect to a loan agreement described in § 4043.34(a).

§ 4043.68 Insolvency or similar settlement.

(a) *Reportable event.* Advance notice is required for an insolvency or similar settlement, as described in § 4043.35.

(b) *Extension.* For a case or proceeding under § 4043.35(a)(1) or (2) that is not commenced by a member of the plan's controlled group, the notice date is extended to 10 days after the commencement of the case or proceeding.

Subpart D—Notice of Failure to Make Required Contributions

§ 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

(a) *General rules.* To comply with the notification requirement in section 303(k)(4) of ERISA and section 430(k)(4) of the Code, a contributing sponsor of a single-employer plan that is covered under section 4021 of ERISA and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the ultimate parent must complete and submit in accordance with this section a properly certified Form 200 that includes all required documentation and other information, as described in the related filing instructions. Notice is required whenever the unpaid balance of a contribution payment required under sections 302 and 303 of ERISA and sections 412 and 430 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made when due (including interest), exceeds $1 million.

(1) Form 200 must be filed with PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(2) If a contributing sponsor or the ultimate parent completes and submits Form 200 in accordance with this section, PBGC will consider the notification requirement in section 303(k)(4) of ERISA and section 430(k)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 303(k) of ERISA and section 430(k) of the Code, PBGC may require any member of the contributing sponsor's controlled group to supplement the Form 200 in accordance with § 4043.3(d).

(c) *Ultimate parent.* For purposes of this section, the term "ultimate parent" means the parent at the highest level in the chain of corporations and/or other organizations constituting a parent-subsidiary controlled group.

PART 4204—VARIANCES FOR SALE OF ASSETS

■ 7. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

§ 4204.12 [Amended]

■ 8. Section 4204.12 is amended by removing the figures "412(b)(3)(A)" and adding in their place the figures "431(b)(3)(A)".

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

■ 9. The authority citation for part 4206 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

§ 4206.7 [Amended]

■ 10. Section 4206.7 is amended by removing the figures "412(b)(4)" and adding in their place the figures "431(b)(5)".

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

■ 11. The authority citation for part 4231 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 4231.2 [Amended]

■ 12. In § 4231.2, the definitions of "actuarial valuation" and "fair market value of assets" are amended by removing the words "section 302 of ERISA and section 412 of the Code" where they appear in each definition and adding in their place the words "section 304 of ERISA and section 431 of the Code".

§ 4231.6 [Amended]

■ 13. In § 4231.6:

■ a. Paragraph (b)(4)(ii) is amended by removing the figures "412(b)(4)" and adding in their place the figures "431(b)(5)".

■ b. Paragraph (c)(2) is amended by removing the words "section 412 of the Code (which requires that such assumptions be reasonable in the aggregate)" and adding in their place the words "section 431 of the Code (which requires that each such assumption be reasonable)".

■ c. Paragraph (c)(5) is amended by removing the figures "412" and adding in their place the figures "431".

Issued in Washington, DC, this 25th day of March 2013.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2013–07664 Filed 4–2–13; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0129]

RIN 1625–AA08

Special Local Regulations; Marine Events, Spa Creek and Annapolis Harbor; Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the swim segment of the "TriRock Triathlon Series", a marine event to be held on the waters of Spa Creek and Annapolis Harbor on July 20, 2013. 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 Spa Creek and Annapolis Harbor during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 3, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2013–0129] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2013–0129) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the swim segment of the TriRock Triathlon Series event.

On July 20, 2013, Competitor Group Inc. of San Diego, California, is sponsoring the "TriRock Triathlon Series" in Annapolis, Maryland. The swim segment of the event will occur from 6:30 a.m. to 8:50 a.m. and will be located in Spa Creek and Annapolis Harbor. Approximately 1,535 participants will operate on a 500-meter swim course located between the Annapolis City Dock and the confluence of the Spa Creek with the Severn River. The swimmers will be supported by sponsor-provided watercraft. The start and finish will be located at the Annapolis City Dock. A portion of the swim course will impede the federal navigation channel. 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.

C. Discussion of Proposed Rule

The Coast Guard proposes to establish special local regulations on specified waters of Spa Creek and Annapolis Harbor. The regulations will be enforced from 6 a.m. to 9:30 a.m. on July 20, 2013. The regulated area includes all waters of the Spa Creek and Annapolis Harbor, from shoreline to shoreline, bounded by a line drawn near the entrance of Spa Creek originating at latitude 38°58′40″ N, longitude 076°28′49″ W, thence south to latitude 38°58′32″ N, longitude 076°28′45″ W. The regulated area is bounded to the southwest by a line drawn from latitude 38°58′34″ N, longitude 076°29′05″ W thence south to latitude 38°58′27″ N, longitude 076°28′55″ W, located at Annapolis, Maryland.

The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Vessels intending to transit Spa Creek and Annapolis Harbor through the regulated area will only be allowed to safely transit the regulated area when the Coast Guard Patrol Commander has deemed it safe to do so. 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. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only 3½ hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area, without authorization from the Captain of the Port Baltimore or his designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed 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 may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Spa Creek and Annapolis Harbor encompassed within the special local regulations from 6 a.m. until 9:30 a.m. on July 20, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children from Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35–T05–0129 to read as follows:

§ 100.35–T05–0129 Special Local Regulations for Marine Events, Spa Creek and Annapolis Harbor; Annapolis, MD.

(a) *Regulqted area.* The following location is a regulated area: All waters of the Spa Creek and Annapolis Harbor, from shoreline to shoreline, bounded by a line drawn near the entrance of Spa Creek originating at latitude 38°58′40″ N, longitude 076°28′49″ W, thence south to latitude 38°58′32″ N, longitude 076°28′45″ W. The regulated area is bounded to the southwest by a line drawn from latitude 38°58′34″ N, longitude 076°29′05″ W thence south to latitude 38°58′27″ N, longitude 076°28′55″ W, located at Annapolis, MD. 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.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person 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) All Coast Guard vessels enforcing this regulated area can be contacted at telephone number 410–576–2693 or on marine band radio VHF–FM channel 16 (156.8 MHz).

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

(d) Enforcement period: This section will be enforced from 6 a.m. to 9:30 a.m. on July 20, 2013.

Dated: March 19, 2013.

Kevin C. Kiefer,

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

[FR Doc. 2013–07682 Filed 4–2–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Proposed Priority—National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Engineering Research Centers (RERCs)—Technologies To Support Successful Aging With Disability

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–3

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes one priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes one priority for an RERC: Technologies to Support Successful Aging with Disability. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend to use this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 3, 2013.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by email, use the following address: *marlene.spencer@ed.gov*. You must include the phrase "Proposed Priorities for RERCs" in the priority title in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8166), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training methods to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

This notice proposes one priority that NIDRR intends to use for RERC competitions in FY 2013 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make awards for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the

notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 5133, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers Program (RERCs)

The purpose of NIDRR's RERC program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

The general requirements for RERCs are set out in subpart D of 34 CFR part 350 (What Rehabilitation Engineering Research Centers Does the Secretary Assist?).

Additional information on the RERC program can be found at: *www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority

This notice contains one proposed priority.

RERC on Technologies To Support Successful Aging With Disability

Background

Current estimates indicate that between 37 million and 52 million individuals living in the United States have some kind of disability (IOM, 2007a; Brault, 2012). These numbers will likely grow significantly in the next 25–30 years as the baby boom generation continues to enter later life, when the risk of disability is the highest (IOM, 2007a). Projections based on the U.S. Census data from 2010 indicate that by 2030, the population 65 years and older will almost double from 35 million to more than 71 million or to approximately 20 percent of the overall population (Brault, 2012).

Although older age is a major risk factor for disability, millions of younger and middle-age adults also live with disabilities. In 2010, some 29.5 million Americans aged 21 to 64 or 16.6 percent of the working-age population reported disabilities (Brault, 2012). This large working-age group includes people who are aging with life-long and early onset disabilities that were once fatal or associated with shortened life expectancy (Jensen et al., 2011; IOM, 2007b, Kemp & Mosqueda, 2004). This population is now experiencing the benefits of increased longevity as well as premature or atypical aging related to their condition, its management, or other environmental factors (Jensen et al., 2011; IOM, 2007; Kailes, 2006; Kemp & Mosqueda, 2004).

As working-age and older adults with disabilities grow older, many face significant new challenges to their health and independence due to the onset of secondary conditions associated with changes in the underlying impairment and the onset of age-related, chronic conditions (Freid et al., 2012; Jensen et al., 2011; IOM, 2007b; Kailes, 2006; Kemp & Mosqueda, 2004: Kinny et al., 2004). The challenges of aging with and into disability are compounded by the presence of economic and environmental barriers, such as a lack of affordable and accessible transportation and housing services. There is a lack of innovative technologies that extend the benefits of health promotion and rehabilitation interventions and strategies into home and community-based settings (Rizzo et al., 2012; Czaja & Sharit, 2009; IOM, 2007a; IOM, 2007c; Mann, 2005).

For example, while emerging research indicates that functional motor capacity and independence can be improved, maintained, or recovered via consistent participation in exercise and rehabilitation programs for individuals with upper and lower extremity impairments (Winstein et al., 2012; Czaja & Sharit, 2009; Merians, et al. 2009; Krakauer, 2006; Mann, 2005; Mynatt & Rodgers, 2002), the availability of evidence-based exercise and rehabilitation programs and interventions in home and community-based settings for this population is severely limited (Lindenberger et al, 2008; Krakauer, 2006; Tyrer et al., 2006). The commercially available, home-based technologies that promise to improve balance and prevent falls are not informed by evidence from rehabilitation science and gerontology and have not been evaluated for use by individuals with disabilities (Rizzo et al., 2011; Czaja & Sharit, 2009; Lindenberger et al., 2008).

Despite limitations in the availability of evidence-based technologies and interventions to support healthy aging with disability, findings from social and demographic research suggests that assistive technologies (AT) and information and communication technologies (ICT) are playing an increasingly important role in the lives of people with disabilities (Wild et al., 2008; Freedman et al., 2006). For example, secondary analysis of data from the National Long-Term Care Survey found that the steadily increasing use of these technologies was associated with downward trends in the reported rates of disability among adults age 65 and over (Spillman, 2004). Other research suggests that AT and ICT may substitute for, or supplement, personal care (Carlson and Ehrlich, 2005).

Findings such as these suggest that greater availability and use of low-cost, evidence-based, computer-aided

technologies, such as AT and ICT, could help the Nation prepare for a future characterized by a growing population of working-age and older adults with long-term disabilities and increased demand for healthcare and long-term services and supports, combined with a shrinking proportion of younger people available to provide personal assistance (Lindenberger, 2008; IOM, 2007a, Pew & Van Hemel, 2004). To respond to the challenges and opportunities in the emerging area of aging, disability and technology, NIDRR proposes to fund a Rehabilitation Engineering Research Center (RERC) on Technologies to Support Healthy Aging With Disability.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes the following priority for the establishment of a Rehabilitation Engineering Research Center (RERC) on Technologies to Support Successful Aging With Disability. Within its designated priority research area, this RERC will focus on innovative technological solutions, new knowledge, and new concepts that will improve the lives of individuals with disabilities.

Under this priority, the RERC must research, develop or identify, and evaluate innovative technologies and strategies that maximize the physical and cognitive functioning of individuals with long-term disabilities as they age. This RERC must engage in research and development activities to build a base of evidence for the usability of, and cost-effectiveness of home-based interactive technologies that are intended to improve physical and cognitive functioning of individuals with disabilities as they age. This RERC may develop and evaluate new technologies, or identify and evaluate existing or commercially available technologies, or both, that are designed to improve the physical and cognitive outcomes of this population. In addition, the RERC must facilitate access to, and use of the low-cost, home-based interactive technologies that improve the physical and cognitive outcomes of individuals with disabilities, through such means as collaborating and communicating with relevant stakeholders, providing technical assistance, and promoting technology transfer.

General RERC Requirements

Under this priority, the RERC must be designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge relevant to its designated priority research area. The RERC must

contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Increased innovation in technologies, products, environments, performance guidelines, and monitoring and assessment tools applicable to its designated priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, institutions of higher education, health care providers, or educators, as appropriate.

(4) Improved usability and accessibility of products and environments in the RERC's designated priority research area. The RERC must contribute to this outcome by emphasizing the principles of universal design in its product research and development. For purposes of this section, the term "universal design" refers to the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

(5) Improved awareness and understanding of cutting-edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with relevant stakeholders, including NIDRR, individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties regarding trends and evolving product concepts related to its designated priority research area.

(6) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to relevant public and private organizations, individuals with disabilities, employers, and schools on policies, guidelines, and standards related to its designated priority research area.

(7) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the technology transfer and knowledge translation of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal, and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research, a plan to disseminate its research results to individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;
- Provide as part of its proposal, and then implement, a plan to disseminate its research results to individuals with disabilities and their representatives; disability organizations; service providers; professional journals; manufacturers; and other interested parties. In meeting this requirement, each RERC may use a variety of mechanisms to disseminate information, including state-of-the-science conferences, Webinars, Web sites, and other dissemination methods; and
- Coordinate with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review

established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed priority only upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority would generate new knowledge through research and development. The new RERCs would generate, disseminate, and promote the use of new information that would improve the options for individuals with disabilities to fully participate in their communities.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 29, 2013.

Michael Yudin,

Delegated the authority to perform the functions and duties of Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–07763 Filed 4–2–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R10–RCRA–2013–0105; FRL–9796–7]

Adequacy of Oregon's Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA Region 10 proposes to approve a modification to the State of Oregon's approved Municipal Solid Waste Landfill Program. On March 22, 2004, EPA issued final regulations allowing research, development, and demonstration (RD&D) permits to be issued to certain municipal solid waste landfills by approved states. On June 14, 2012, Oregon submitted an application to EPA Region 10 seeking Federal approval of its RD&D requirements.

DATES: Comments on this proposed action must be received in writing on or before May 3, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2013–0105, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: calabro.domenic@epa.gov.*
- *Fax: (206) 553–6640, to the attention of Domenic Calabro.*
- *Mail:* Send written comments to Domenic Calabro, Office of Air, Waste, and Toxics, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AWT–122, Seattle, WA 98101.
- *Hand Delivery or Courier:* Deliver your comments to: Domenic Calabro, Office of Air, Waste, and Toxics, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AWT–122, Seattle, WA 98101. Such deliveries are only accepted during the Office's normal hours of operation.

For detailed instructions on how to submit comments, please see the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Domenic Calabro at (206) 553–6640 or by email at *calabro.domenic@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, the EPA is approving modifications to Oregon's Municipal Solid Waste Landfill permit program to allow for Research, Development, and Demonstration permits through a direct final rule without prior proposal, because the EPA views this as a noncontroversial action and anticipates no adverse comments to this action. Unless we receive written adverse comments which oppose this approval during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If the EPA receives written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule.

The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: March 8, 2013.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2013–07769 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–2013–0007]

FHWA RIN 2125–AF48
FTA RIN 2132–AB05

Environmental Impact and Related Procedures

Correction

The correction that appeared on page 15925, Wednesday, March 13, 2013 is corrected to read as follows:

On page 13609, in the first column, the docket number should read as set forth above.

[FR Doc. C2–2013–04678 Filed 4–2–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R1–ES–2012–0080; FWS–R1–ES–2012–0088; FWS–R1–ES–2013–0009; FWS–R1–ES–2013–0021; 4500030114]

RIN 1018–AY18; 1018–AZ17; 1081–AZ36; 1081–AZ37

Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for Taylor's Checkerspot Butterfly, Streaked Horned Lark, and Four Subspecies of Mazama Pocket Gopher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our October 11, 2012 (77 FR 61938), proposal to list Taylor's checkerspot butterfly as endangered and streaked horned lark as threatened and to designate critical habitat, and on our December 11, 2012 (77 FR 73770), proposal to list four subspecies of Mazama pocket gopher (Olympia, Tenino, Yelm, and Roy Prairie) and to designate critical habitat, under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed critical habitat designations and an amended required determinations section of the proposed designations. The draft economic analysis addresses the potential economic impacts of critical habitat designation for all six subspecies (collectively, the "prairie species") under consideration in these rulemakings. In addition, we are providing information that we inadvertently omitted from the preamble to the October 11, 2012, proposed rule (77 FR 61938) to list Taylor's checkerspot butterfly as endangered and streaked horned lark as threatened and to designate critical habitat. We are reopening the comment periods to allow all interested parties an opportunity to comment simultaneously on the proposed rules, the associated DEA, and our amended required determinations. Comments previously submitted on these proposed rulemakings do not need to be resubmitted, as they will be fully considered in preparation of the final rules. We also announce a public hearing and three public information workshops on our proposed rules and associated documents.

DATES: *Written Comments:* We will consider comments received or postmarked on or before May 3, 2013. Please note comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decisions on these actions.

Public Information Workshops: We will hold three public information workshops. Two in Olympia, Washington, for all six subspecies, on Tuesday, April 16, 2013, from 3 p.m. to 5 p.m. and from 6 p.m. to 8 p.m.; and another in Salem, Oregon, for Taylor's checkerspot butterfly and streaked horned lark, on Wednesday, April 17, 2013, from 6 p.m. to 8 p.m. (see **ADDRESSES**).

Public Hearing: We will hold a public hearing in Lacey, Washington, on Thursday, April 18, 2013, from 3 p.m. to 5 p.m. and continuing from 6 p.m. to 8 p.m. (see **ADDRESSES**).

ADDRESSES: *Document Availability:* You may obtain copies of the proposed rules at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0080 for Taylor's checkerspot butterfly and streaked horned lark, and at Docket No. FWS–R1–ES–2012–0088 for the Mazama pocket gophers; from the Washington Fish and Wildlife Office's Web site (*http://www.fws.gov/wafwot*); or by contacting the Washington Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). You may obtain a copy of the combined draft economic analysis at Docket No. FWS–R1–ES–2013–0009 or Docket No. FWS–R1–ES–2013–0021.

Written Comments: You may submit written comments by one of the following methods, or at the public information workshop or public hearing:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Submit comments on the listing proposal for Taylor's checkerspot butterfly and streaked horned lark to Docket No. FWS–R1–ES–2012–0080; submit comments on the critical habitat proposal for Taylor's checkerspot butterfly and streaked horned lark to Docket No. FWS–R1–ES–2013–0009. Submit comments on the listing proposal for Mazama pocket gophers to Docket No. FWS–R1–ES–2012–0088; submit comments on the critical habitat proposal for Mazama pocket gophers to Docket No. FWS–R1–ES–2013–0021. See **SUPPLEMENTARY INFORMATION** for an explanation of the four dockets.

(2) *By hard copy:*

- Submit comments on the listing proposal for Taylor's checkerspot butterfly and streaked horned lark by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0080; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.
- Submit comments on the critical habitat proposal for Taylor's checkerspot butterfly and streaked horned lark by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2013–0009; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

• Submit comments on the listing proposal for Mazama pocket gophers by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0088; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

• Submit comments on the critical habitat proposal for Mazama pocket gophers by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2013–0021; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Public Information Workshops and Public Hearing: The public information workshops will be held at the Salem Library, 585 Liberty Street SE., Salem, Oregon 97301, and at the Lacey Community Center, 6729 Pacific Avenue SE., Lacey, Washington 98503. The public hearing will be held in the Auditorium of Office Building 2 (OB2), 1125 Jefferson Street SE., Olympia, Washington 98504 (across Capitol Way from the Legislative Building, on the lower level of the building). People needing reasonable accommodation in order to attend and participate in the public hearing should contact Ken S. Berg, Manager, Washington Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Manager, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Lacey, WA 98503; by telephone at 360–753–9440; or by facsimile at 360–534–9331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed rules that were published in the **Federal Register** on October 11, 2012 (77 FR 61938), and on December 11, 2012 (77 FR 73770); our combined draft economic analysis of the proposed critical habitat designations; and the amended required determinations provided in this document. We will consider all information and recommendations from all interested parties.

On October 11, 2012, we published a proposal (77 FR 61938) to list Taylor's checkerspot butterfly (*Euphydryas editha taylori*) as endangered, to list the streaked horned lark (*Eremophila alpestris strigata*) as threatened, and to designate critical habitat for these two subspecies in Oregon and Washington. On December 11, 2012, we published a proposal (77 FR 73770) to list four subspecies of the Mazama pocket gopher (Roy Prairie [*Thomomys mazama glacialis*], Olympia [*T. m. pugetensis*], Tenino [*T. m. tumuli*], and Yelm [*T. m. yelmensis*]) as threatened, and to designate critical habitat for these four subspecies in Washington. Later this year, we will publish four separate final decisions: two final rules concerning the listing determinations described above (i.e., a final rule for Taylor's checkerspot butterfly and streaked horned lark, and another final rule for the Mazama pocket gophers), and two others concerning the critical habitat determinations described above. The final listing rule for Taylor's checkerspot butterfly and streaked horned lark will publish under the existing Docket No. FWS–R1–ES–2012–0080, and the final listing rule for the Mazama pocket gophers will publish under the existing Docket No. FWS–R1–ES–2012–0088, while the final critical habitat designations will publish separately under Docket No. FWS–R1–ES–2013–0009 and Docket No. FWS–R1–ES–2013–0021, respectively.

We request that you provide comments specifically on our proposed listing determinations for Taylor's checkerspot butterfly and streaked horned lark under Docket No. FWS–R1–ES–2012–0080 and for the Mazama pocket gophers under Docket No. FWS–R1–ES–2012–0088 (for comments on our related proposed critical habitat designations, please refer to alternate docket numbers below). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning threats (or the lack thereof) to the subspecies proposed for listing, and regulations that may be addressing those threats.

(2) Additional information concerning the biology, range, distribution, and population sizes and trends of the subspecies proposed for listing, including the locations of any additional populations of these subspecies.

(3) Any information on the biological or ecological requirements of the subspecies proposed for listing, and ongoing conservation measures for the subspecies and their habitat.

(4) Additional information pertaining to the promulgation of a special rule to exempt existing maintenance activities and agricultural practices from section 9 take prohibitions on private and Tribal lands, including airports, where the four subspecies of Mazama pocket gophers and the streaked horned lark occur.

(5) Whether any populations of the streaked horned lark should be considered separately for listing as a distinct population segment (DPS), and if so, the justification for how that population meets the criteria for a DPS under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (61 FR 4722, February 7, 1996).

We request that you provide comments specifically on the critical habitat determination and related draft economic analysis under Docket No. FWS–R1–ES–2013–0009 for the Taylor's checkerspot butterfly and streaked horned lark, and Docket No. FWS–R1–ES–2013–0021 for the Mazama pocket gophers. The combined draft economic analysis addresses the potential economic impacts of critical habitat designation for all six subspecies under consideration (collectively, the "Prairie Species of Western Washington and Oregon," referred to in this document as the "prairie species"). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(6) The reasons why we should or should not designate areas for the prairie species as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the prairie species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(7) Specific information on:

• The amount and distribution of critical habitat for each of the prairie species;

• Areas in the geographic area occupied at the time of listing and that contain the physical or biological features essential for the conservation of each of the prairie species;

• Whether special management considerations or protections may be required for the physical or biological features essential to the conservation of these species; and

• What areas not currently occupied are essential to the conservation of each of the prairie species and why.

(8) Land use designations and current or planned activities in the areas occupied or unoccupied by the species and proposed as critical habitat, and the possible impacts of these activities on

each of the prairie species, or of critical habitat on these designations or activities.

(9) Any foreseeable economic, national security, or other relevant impacts of designating any area as critical habitat. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas that may experience these impacts.

(10) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation. We are considering the possible exclusion of non-Federal lands, especially areas in private ownership, and whether the benefits of exclusion may outweigh the benefits of inclusion of those areas. We, therefore, request specific information on:

- The benefits of including any specific areas in the final designation and supporting rationale.
- The benefits of excluding any specific areas from the final designation and supporting rationale.
- Whether any specific exclusions may result in the extinction of any of the prairie species and why.

For private lands in particular, we are interested in information regarding the potential benefits of including private lands in critical habitat versus the benefits of excluding such lands from critical habitat. This information does not need to include a detailed technical analysis of the potential effects of designated critical habitat on private property. In weighing the potential benefits of exclusion versus inclusion of private lands, the Service may consider whether existing partnership agreements provide for the management of the subspecies. We may consider, for example, the status of conservation efforts, the effectiveness of any conservation agreements to conserve the subspecies, and the likelihood of the conservation agreement's future implementation. We request comment on the broad public benefits of encouraging collaborative efforts and encouraging local and private conservation efforts.

(11) The possible exclusion of lands under Port of Portland ownership from Critical Habitat Unit 3–O for the streaked horned lark. The Service has received a draft Candidate Conservation Agreement with Assurances from the Port of Portland for conservation of the streaked horned lark at Portland International Airport and at a new mitigation site (Government Island). If this plan is finalized prior to the issuance of our final rule, we may consider the exclusion of this site from the final designation of critical habitat, following evaluation of the agreement according to our criteria as described in our proposed rule (October 11, 2012; 77 FR 61938; see *Exclusions under section 4(b)(2) of the Act*).

(12) Our process used for identifying those areas that meet the definition of critical habitat for each of the six subspecies, as described in the section of the proposed rules for Taylor's checkerspot butterfly and streaked horned lark (October 11, 2012; 77 FR 61938) and the Mazama pocket gophers (December 11, 2012; 77 FR 73770) titled "Criteria Used to Identify Critical Habitat."

(13) Information on the extent to which the description of potential economic impacts in the draft economic analysis is complete and accurate.

(14) Whether the draft economic analysis makes appropriate assumptions regarding current practices and any regulatory changes that will likely occur as a result of the designation of critical habitat.

(15) Whether the draft economic analysis identifies all Federal, State, and local costs and benefits attributable to the proposed designation of critical habitat, and information on any costs that may have been inadvertently overlooked.

(16) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(17) Specific information on ways to improve the clarity of this rule as it pertains to completion of consultations under section 7 of the Act.

Our final determinations concerning listing Taylor's checkerspot butterfly as an endangered species, streaked horned lark as a threatened species, and the four Mazama pocket gopher subspecies as threatened species and designating critical habitat for all of these subspecies in Washington and Oregon will take into consideration all written comments we receive during the comment periods for each species, from peer reviewers, and during the public information workshops, as well as comments and public testimony we may receive during the public hearing. The comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determinations. On the basis of peer reviewer and public comments, as well as any new information we may receive, we may, during the development of our final determination concerning critical habitat, find that areas within the proposed critical habitat designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act. Our final determination of critical habitat may therefore differ from the proposed designation.

If you submitted comments or information on the proposed rule for Taylor's checkerspot butterfly and streaked horned lark (October 11, 2012; 77 FR 61938) during the comment period from October 11, 2012, to December 10, 2012, or on the proposed rule for the Mazama pocket gophers (December 11, 2012; 77 FR 73770) during the comment period from December 11, 2012, to February 11, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determinations.

You may submit your comments and materials concerning the proposed rules or draft economic analysis by one of the methods listed in the **ADDRESSES** section. Verbal testimony may also be presented during the public hearing (see **DATES** and **ADDRESSES** sections). We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you submit your comment via U.S. mail, you may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as some of the supporting documentation we used in preparing the proposed rules and draft economic analysis, will be available for public inspection on *http://www.regulations.gov* at Docket Nos. FWS–R1–ES–2012–0080 and FWS–R1–ES–2013–0009 for the Taylor's checkerspot butterfly and streaked horned lark, and Docket Nos. FWS–R1–ES–2012–0088 and FWS–R1–ES–2013–0021 for the Mazama pocket gophers. All comments and materials we receive, and all supporting documentation, are available for public inspection by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Information Workshops and Public Hearing

We are holding three public information workshops and a public hearing on the dates listed in the **DATES** section at the addresses listed in the **ADDRESSES** section (above). We are holding the public hearing to provide interested parties an opportunity to present verbal testimony (formal, oral comments) or written comments regarding the proposed listing of Taylor's checkerspot butterfly as an endangered species, streaked horned lark as a threatened species, and four subspecies of Mazama pocket gophers as threatened species; the proposed designation of critical habitat for these six subspecies in Washington and Oregon; and the associated draft economic analysis of the proposed critical habitat designations. A formal public hearing is not, however, an opportunity for dialogue with the Service; it is only a forum for accepting formal verbal testimony. In contrast to the hearing, the public information workshops will allow the public the opportunity to interact with Service staff, who will be available to provide information and address questions on the proposed rules and the associated draft economic analysis. We cannot accept verbal testimony at the public information workshops; verbal testimony can only be accepted at the public hearing. Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. At the public hearing, formal verbal testimony will be transcribed by a certified court reporter and will be fully considered in the preparation of our final determination. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at the hearing if they desire to make an oral statement. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

Persons with disabilities needing reasonable accommodations to participate in the public information workshop or public hearing should contact Ken S. Berg, Manager, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Reasonable accommodation requests should be received at least 3 business days prior to the public information workshop or public hearing to help ensure availability; at least 2 weeks prior notice is requested for American Sign Language needs.

Background

The topics discussed below are relevant to designation of critical habitat for Taylor's checkerspot butterfly and streaked horned lark in Washington and Oregon and designation of critical habitat for four subspecies of Mazama pocket gophers in Washington. For more information on the proposed listings and proposed designations of critical habitat for these prairie species, please refer to the proposed rules published in the **Federal Register** on October 11, 2012 (77 FR 61938) and December 11, 2012 (77 FR 73770), which are available online at *http://www.regulations.gov* (at Docket No. FWS–R1–ES–2012–0080 and Docket No. FWS–R1–ES–2012–0088) or from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). In addition, please see the section *Addition to the Proposed Rule for the Listing of Taylor's Checkerspot Butterfly and Streaked Horned Lark and Designation of Critical Habitat*, below.

Previous Federal Actions

On October 11, 2012, we published a proposed rule (77 FR 61938) to list Taylor's checkerspot butterfly as endangered and streaked horned lark as threatened and to designate critical habitat. We proposed to designate a total of 6,875 acres (ac) (2,782 hectares (ha)) in Washington and Oregon as critical habitat for the Taylor's checkerspot butterfly, and 12,159 ac (4,920 ha) in Washington and Oregon for the streaked horned lark. Within that proposed rule, we announced a 60-day comment period, which ended on December 10, 2012. Approximately 17 percent of the proposed designation for the streaked horned lark overlaps areas that are currently designated as critical habitat for the western snowy plover (*Charadrius alexandrinus nivosus*) (77 FR 36728; June 19, 2012).

On December 11, 2012, we published a proposed rule (77 FR 73770) to list four subspecies of Mazama pocket gopher (Olympia, Tenino, Yelm, and Roy Prairie) as threatened and to designate critical habitat. We proposed to designate a total of 9,234 acres (ac) (3,737 ha) in Washington. Within that proposed rule, we announced a 60-day comment period, which ended on February 11, 2013. The proposed designation for the Mazama pocket gophers overlaps some of the areas that are currently proposed as critical habitat for Taylor's checkerspot butterfly and streaked horned lark. We will submit final determinations on the proposed listing and critical habitat designations for the prairie species to the **Federal Register** on or before September 30, 2013, for publication.

Addition to the Proposed Rule for the Listing of Taylor's Checkerspot Butterfly and Streaked Horned Lark and Designation of Critical Habitat

On October 11, 2012, we published in the **Federal Register** (77 FR 61938) a proposed rule to list the Taylor's checkerspot butterfly as endangered, to list the streaked horned lark as threatened, and to designate critical habitat for each of these subspecies. In the preamble of that proposed rule, we inadvertently omitted some text from the section *Criteria Used to Identify Critical Habitat*. Here, we print, in full, the description of the criteria used to identify critical habitat for the Taylor's checkerspot butterfly and streaked horned lark.

Criteria Used To Identify Critical Habitat [Taylor's Checkerspot Butterfly and Streaked Horned Lark]

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species, and begin by assessing the specific geographic areas occupied by the species at the time of listing. If such areas are not sufficient to provide for the conservation of the species, in accordance with the Act and its implementing regulations at 50 CFR 424.12(e), we then consider whether designating additional areas outside the geographic areas occupied at the time of listing may be essential to ensure the conservation of the species. We consider unoccupied areas for critical habitat when a designation limited to the present range of the species may be inadequate to ensure the conservation of the species. In this case, since we are proposing listing simultaneously with the proposed critical habitat, all areas presently occupied by the Taylor's checkerspot butterfly or streaked horned lark are presumed to constitute those areas occupied at the time of listing; those areas currently occupied by the subspecies are identified as such in each of the unit or subunit descriptions below. These descriptions similarly identify which of the units or subunits are believed to be unoccupied at the time of listing. Our determination of the areas occupied at the time of listing, and our rationale for how we determined specific unoccupied areas to be essential the conservation of the subspecies, are provided below.

We plotted the known locations of the Taylor's checkerspot butterfly and

streaked horned-lark where they occur in Washington and Oregon using 2011 NAIP digital imagery in ArcGIS, version 10 (Environmental Systems Research Institute, Inc.), a computer geographic information system program.

To determine if the currently occupied areas contain the primary constituent elements, we assessed the life-history components and the distribution of both subspecies through element occurrence records in State natural heritage databases and natural history information on each of the subspecies as they relate to habitat. We first considered whether the presently occupied areas were sufficient to conserve the species. If not, to determine if any unoccupied sites met the criteria for critical habitat, we then considered: (1) The importance of the site to the overall status of the subspecies to prevent extinction and contribute to future recovery of the subspecies; (2) whether the area presently provides the essential physical or biological features, or could be managed and restored to contain the necessary physical and biological features to support the subspecies; and (3) whether individuals were likely to colonize the site. We also considered the potential for reintroduction of the subspecies, where anticipated to be necessary (for Taylor's checkerspot butterfly only).

Occupied Areas

Taylor's Checkerspot Butterfly

For Taylor's checkerspot butterfly, we are proposing to designate critical habitat within the geographical area occupied by the species at the time of listing, as well as in unoccupied areas that we have determined to be essential to the conservation of the species (described below). These presently occupied areas provide the physical or biological features essential to the conservation of the species, which may require special management considerations or protection. We determined occupancy in these areas based on recent survey information. All sites occupied by the Taylor's checkerspot butterfly have survey data as recently as 2011, except for the Forest Service sites on the north Olympic Peninsula where data are as recent as 2010 (Potter, 2011; Linders 2011; Ross 2011; Holtrop 2010, Severns and Grossboll 2011). In addition, there have been some recent experimental translocations of Taylor's checkerspot butterfly to sites where it had been extirpated within its historical range. If translocated populations have been documented as successfully reproducing, we considered those sites to be presently occupied by the subspecies. Areas proposed as critical habitat for the Taylor's checkerspot butterfly are representative of the known historical geographic distribution for the species, outside of Canada.

Streaked Horned Lark

For the streaked horned lark, we are proposing critical habitat within the geographical area occupied by the subspecies at the time of listing, with the exception of a single subunit that is currently unoccupied (described below). We determined occupancy for the streaked horned lark based on recent survey data (Anderson 2011; Linders 2011; Moore 2011), and assumptions about occupancy based on known recent presence of the subspecies and continuing availability of suitable habitat. Not all known streaked horned lark sites are surveyed every year due to budget and staffing limitations, and due to the inaccessibility of some of the sites. If we have recent information on the presence of streaked horned larks and if the site has the habitat characteristics required by the species, we assume that streaked horned larks persist at the site. We consider it reasonable to presume a site is occupied by the streaked horned lark if individuals have been detected during the breeding season within the last several years and if the site receives consistent management that provides the early seral characteristics required by the subspecies (e.g., regular maintenance at airports) or if it retains the essential habitat features for the subpecies (e.g., dredge material has been deposited at the site within the last 5 years).

We are not proposing to designate critical habitat in the agricultural fields in the Willamette Valley, because we are unable to determine which areas within the large agricultural matrix in the valley will meet the definition of critical habitat at any time. Agricultural habitats can provide appropriate habitat conditions, but these conditions (large, open landscape context, low stature vegetation, bare ground) occur unpredictably and vary in location from year to year. Large areas of bare ground and sparse vegetation likely occur somewhere within the Willamette Valley every year, as fields are newly planted, mowed, burned, tilled, or perhaps as planted crops fail for various reasons. However, the occurrence of these shifting habitats within more than a million acres of agricultural fields is unpredictable. For these reasons, we have no basis for concluding that any specific areas are essential for conservation, because we have no way of knowing where or how long the appropriate conditions will persist.

Even though we cannot determine the location of the physical and biological factors and primary constituent elements on agricultural lands in the Willamette Valley, we acknowledge that agricultural lands in the Willamette Valley are important and will be necessary for recovery of the streaked horned lark.

Unoccupied Areas

We are proposing critical habitat in areas unoccupied at the time of listing, but that we have determined to be essential to the conservation of the subspecies for the Taylor's checkerspot butterfly (multiple subunits) and the streaked horned lark (a single subunit).

Taylor's Checkerspot Butterfly

We are proposing 11 subunits as critical habitat for the Taylor's checkerspot butterfly that are not presently occupied by the subspecies. There has been a rapid decline in the spatial distribution of prairies (grassland habitat) throughout the range of Taylor's checkerspot butterfly. There are two primary drivers of habitat loss for the subspecies across its range: development and changes in the vegetative cover across the landscape. One of the primary threats to the persistence of the Taylor's checkerspot butterfly is loss of habitat due to successional changes that occur when habitat is not subject to disturbance or does not receive special management. These changes in the vegetative structure are due to the encroachment of large shade-producing trees, shrubs, and invasive sod-forming grasses that outcompete native grassland plants for water, space, light, and nutrients, which in turns effects the vegetative composition of these sites. Changes from one vegetative form to another have degraded many of the historical Taylor's checkerspot butterfly sites. As a result, the present distribution of Taylor's checkerspot butterfly is disjunct and isolated throughout the subspecies' historical range. If the Taylor's checkerspot butterfly is to recover, there must be sufficient suitable habitat available for population expansion and growth that is connected in such a way as to allow for dispersal, and these sites must receive routine and sustained management to maintain the early seral conditions essential to the conservation of the species.

For this proposed critical habitat, we first identified the areas presently occupied by Taylor's checkerspot

butterfly and that provide the physical or biological features essential to the conservation of the species. We then determined that the designation of these areas as critical habitat would not be sufficient to provide for the conservation of Taylor's checkerspot butterfly, because, as described above, the distribution and abundance of the subspecies has declined so dramatically in recent years that presently occupied sites are too isolated and disjunct to provide for long-term viability. We therefore evaluated areas outside the presently occupied patches to identify unoccupied habitat areas essential for the conservation of the species. We propose to designate some areas adjacent to all known occurrences of Taylor's checkerspot butterfly but that may currently be unoccupied to provide for population expansion and growth. Areas outside of occupied habitat utilized by Taylor's checkerspot butterflies are proposed as many occupied sites are extremely small, and if populations are to expand for long-term viability they will need sufficient space for shelter, breeding, and larval and adult feeding to accommodate greater numbers of individuals. In addition, we are proposing to designate some specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied, but are presently unoccupied. These unoccupied areas are proposed because they are sites where Taylor's checkerspot butterfly was recently extirpated, but that are currently receiving restoration specifically aimed to enhance Taylor's checkerspot butterfly habitat. These areas would likely be sites that would receive captively bred and translocated Taylor's checkerspots to achieve the recovery of the subspecies, as this technique for reoccupying former sites has been successfully tested at several locations (Scatter Creek south and Range 50, JBLM). We are also proposing one presently unoccupied site (Smith Prairie) because of the high potential for reintroduction success, due to the presence of potentially suitable habitat and landowner commitment to the conservation of Taylor's checkerspot butterfly. Each of the presently unoccupied but essential sites proposed for critical habitat additionally provide some or all of the PCEs for the Taylor's checkerspot butterfly. The primary reason for proposing to designate critical habitat in previously occupied areas (and the single unoccupied non-historical site at Smith Prairie) is to enable the reintroduction and reestablishment of the species broadly throughout its historical range to ensure its long-term persistence. Due to the geographic distribution of these unoccupied sites, they provide areas for the future translocation and subsequent dispersal of captively bred Taylor's checkerspot butterflies to achieve the conservation of the species.

We have identified these unoccupied areas as essential to the conservation of the Taylor's checkerspot butterfly because they are located strategically between, and in some cases, adjacent to, occupied areas from which the butterfly may disperse; these areas contain one or more of the PCEs for the butterfly; and are all receiving or are slated to receive restoration treatments that will increase the amount of suitable habitat available.

Streaked Horned Lark

For the streaked horned lark, we propose one subunit, Coffeepot Island in the Columbia River, which may not be occupied at the time of listing, and that we have therefore evaluated as if it were unoccupied to determine whether it is nonetheless essential to the conservation of the subspecies. Occupancy by the streaked horned lark was last documented on Coffeepot Island in 2004. Surveys since this time have been intermittent, and changes in the vegetation structure have diminished the likelihood that streaked horned larks will use Coffeepot Island in the absence of restoration. Subsequent to our identification of all areas presently occupied by the species and that provide the physical or biological features essential to the conservation of the streaked horned lark, we determined that Coffeepot Island is essential to the conservation of the subspecies because it provides an essential "stepping stone" in the chain of breeding sites on the islands in the Columbia River. In addition, the island is being considered as a dredge deposit site, which will recreate the necessary PCEs for occupancy by breeding streaked horned larks in the future. We have therefore determined that although presently unoccupied, Coffeepot Island is essential to the conservation of the streaked horned lark.

In all cases, when determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement (such as airport runways and roads), and other structures because such lands lack the essential physical or biological features for Taylor's checkerspot butterfly or streaked horned lark, with the exception of graveled margins of the airport runways and taxiways. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of the proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing four units of critical habitat for designation based on sufficient elements of physical and biological features being present to support life-history processes for the Taylor's checkerspot butterfly and streaked horned lark. These 4 units are further divided into 47 subunits, some of which contain proposed critical habitat for both subspecies. Some subunits within the units contain all of the identified elements of physical and biological features and support multiple life-history processes. Some subunits contain only some elements of the physical and biological features necessary to support the subspecies' particular use of that habitat. Because we determined that the areas presently occupied by the Taylor's checkerspot butterfly and the streaked horned lark are not sufficient to provide for the conservation of these subspecies, we have additionally identified some subunits that are presently unoccupied, but that we have determined to be essential to the conservation of the species. Therefore, we are also proposing these unoccupied areas as critical habitat for the Taylor's checkerspot butterfly and streaked horned lark.

We invite public comment on our identification of those areas presently occupied by Taylor's checkerspot butterfly or streaked horned lark and provide the physical or biological features that may require special management considerations or protection, as well as areas that are currently unoccupied but that we have determined to be essential to the conservation of the subspecies.

Critical Habitat

Section 3 of the Act defines critical habitat as those specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and

that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency unless it is exempted pursuant to the provisions of the Act (16 U.S.C. 1536(e)–(n) and (p)). Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consistent with the best scientific data available, the standards of the Act, and our regulations, we have initially identified, for public comment, a total of 6,875 ac (2,782 ha) in 3 units (18 subunits) for Taylor's checkerspot butterfly and 12,159 ac (4,920 ha) in 3 units (29 subunits) for streaked horned lark, located in Washington and Oregon, and a total of 9,234 acres (ac) (3,737 ha) in 1 unit (8 subunits) for four subspecies of Mazama pocket gophers in Washington, that meet the definition of critical habitat for each of these subspecies. In addition, the Act provides the Secretary with the discretion to exclude certain areas from the final designation after taking into consideration economic impacts, impacts on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat. In the case of the Taylor's checkerspot butterfly, streaked horned lark, and Mazama pocket gophers, the benefits of critical habitat include public awareness of the presence of one or more of these subspecies and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. We also consider the potential economic impacts that may result from the designation of critical habitat.

In the proposed rule, we identified several areas to consider excluding from the final rule. We are considering excluding from the final designation for Taylor's checkerspot butterfly approximately 1,394 ac (565 ha) of State, county, and private lands that have either a perpetual conservation easement, voluntary conservation agreement, conservation or watershed preserve designation, or similar conservation protection; for streaked horned lark, approximately 182 ac (73 ha) of habitat that may be managed and protected for the western snowy plover, streaked horned lark, and other native coastal species of cultural significance on lands under Shoalwater Tribal ownership and management; and for the Mazama pocket gophers, approximately 512 ac (207 ha) of State and private lands that have either a habitat conservation plan (HCP), voluntary conservation agreement, or similar conservation protection.

In addition, the Port of Portland is in the process of developing a Candidate Conservation Agreement with Assurances for the conservation of the streaked horned lark on their property within the proposed designation. If this plan is finalized prior to the issuance of our final rule, we may consider the exclusion of 414 ac (167 ha) from the final critical habitat for the streaked horned lark, following evaluation of the agreement according to our criteria as described in our proposed rule (October 11, 2012; 77 FR 61938; see *Exclusions under section 4(b)(2) of the Act*).

These specific exclusions will be considered on an individual basis or in any combination thereof. In addition, the final designations may not be limited to these exclusions, but may also consider other exclusions as a result of continuing analysis of relevant considerations (scientific, economic, and other relevant factors, as required by the Act) and the public comment process. In particular, we solicit comments from the public on whether all of the areas identified meet the definition of critical habitat, whether other areas would meet that definition, whether to make the specific exclusions we are considering, and whether there are other areas that are appropriate for exclusion.

The final decision on whether to exclude any area will be based on the best scientific data available at the time of the final designations, including information obtained during the comment periods and information about the economic impact of the designations. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designations, which is available for review and comment (see **ADDRESSES** section, above, and *Draft Economic Analysis* section, below).

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

Critical habitat is proposed on Department of Defense lands in the State of Washington for all six prairie species; all of these lands are on Joint Base Lewis-McChord (JBLM). As described in our proposed rules (October 11, 2012, 77 FR 61938; and December 11, 2012; 77 FR 73770), although JBLM's INRMP has the potential to provide a conservation benefit to the Taylor's checkerspot butterfly, streaked horned lark, and Mazama pocket gophers, it does not at present. Since JBLM's INRMP is currently undergoing revision and is subject to change, we have reserved judgment on whether management under the new INRMP will meet our criteria for exemption from critical habitat at this time. If we determine prior to our final rulemaking that conservation efforts identified in the newly revised INRMP will provide a conservation benefit to the species identified previously, we may at that time exempt the identified JBLM lands from the final designation of critical habitat.

Draft Economic Analysis

The purpose of the draft economic analysis (DEA) (IEc 2013) is to identify and analyze the potential economic impacts associated with the proposed critical habitat designations for the six prairie species: Taylor's checkerspot butterfly, streaked horned lark, and the Roy Prairie, Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher.

The DEA describes the economic impacts of potential conservation efforts for the six prairie species; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact associated with the proposed critical habitat designation is analyzed by comparing scenarios "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections that would be in place for these species should they be listed under the Act (e.g., under Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the six prairie species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for these six prairie species. In other words, the "incremental" costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act.

The "without critical habitat" scenario represents the baseline for the analysis, and considers the protections that would be afforded each of the six subspecies through listing under the Act regardless of critical habitat designation. The baseline for this analysis is the state of regulation, absent designation of critical habitat, which provides protection to the species under the Act, as well as under other Federal, State, and local laws and conservation plans. The baseline includes sections 7, 9, and 10 of the Act to the extent that they are expected to apply absent the designation of critical habitat for the species. Baseline costs are not included in the estimated economic impacts of critical habitat, because the Act provides for the consideration of economic, national security, and other relevant impacts only in association with the designation of critical habitat (section 4(b)(2) of the Act); the listing of a species, on the other hand, is limited to a determination based solely on the best scientific and commercial data available (section 4(b)(1)(A) of the Act).

The analysis qualitatively describes how baseline conservation for the Taylor's checkerspot butterfly, streaked horned lark, and Mazama pocket gophers would be implemented across the proposed designation if we finalize the listing of these subspecies in order to provide context for the incremental analysis, which separates the costs attributable to critical habitat designation from those associated with listing (Chapter 3 of the DEA). The "with critical habitat" scenario describes and monetizes the incremental impacts due specifically to the designation of critical habitat for the six prairie species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat, and constitute the potential incremental costs attributed to critical habitat over and above those baseline costs attributed to listing. For a further description of the methodology of the analysis, see Chapter 2, "Framework for the Analysis," of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the six prairie species over the next 20 years, which was determined to be the appropriate period for analysis due to the absence of specific information on the expected timeframe for recovery of the species, and because limited planning information is available for most activities to reliably forecast activity levels for projects beyond a 20-year timeframe. The DEA identifies potential incremental costs that may be incurred as a result of the proposed critical habitat designation; as described above, these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

In the DEA, we concentrated on the activities of primary concern with respect to potential adverse modification of critical habitat. The key concern is the potential for activities to result in habitat alteration within a critical habitat unit. Our analysis therefore focuses on the following activities:

- Military activities;
- Recreation and habitat management;
- Airports and agricultural activities;
- Transportation;
- Electricity distribution and forestry activities; and
- Dredging activities.

Within these activity categories, we focus our analysis on those projects and activities that are considered reasonably likely to occur within the proposed critical habitat area. This includes projects or activities that are currently planned or proposed, or that permitting agencies or land managers indicated are likely to occur.

When a species is federally listed as an endangered or threatened species, it receives protection under the Act. For example, under section 7 of the Act, Federal agencies must consult with the Service to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of the species (referred to as a "jeopardy analysis"). The economic impacts of conservation measures undertaken to avoid jeopardy to the species are considered baseline impacts in our analysis, as they are not generated by the critical habitat designation, and represent costs that would be incurred regardless of whether critical habitat is designated. In other words, baseline conservation measures and associated economic impacts are not affected by decisions related to critical habitat designation for these species. Baseline protections accorded listed species under the Act and other Federal and State regulations and programs are described in Chapter 2 and 3 of the DEA.

The only Federal regulatory effect of the designation of critical habitat is the prohibition on Federal agencies taking actions that are likely to adversely modify or destroy critical habitat. They

are not required to avoid or minimize effects unless the effects rise to the level of destruction or adverse modification as those terms are used in section 7 of the Act. Even then, the Service must recommend reasonable and prudent alternatives that can be implemented consistent with the intended purpose of the action, that are within the scope of the Federal agency's legal authority and jurisdiction, and that are economically and technologically feasible. Thus, while the Service may recommend conservation measures, unless the action is likely to destroy or adversely modify critical habitat, implementation of recommended measures is voluntary and Federal agencies and applicants have discretion in how they carry out their mandates under section 7 of the Act.

Thus, the direct, incremental impacts of critical habitat designation stem from the consideration of the potential for destruction or adverse modification of critical habitat during section 7 consultations. The two categories of direct, incremental impacts of critical habitat designation are: (1) The additional administrative costs of conducting section 7 consultation related to critical habitat; and (2) implementation of any conservation efforts requested by the Service through section 7 consultation, or required by section 7 to prevent the destruction or adverse modification of critical habitat.

The DEA describes the types of project modifications that would likely be recommended by the Service, as well as other State and local conservation plans, to avoid jeopardy to Taylor's checkerspot butterfly, streaked horned lark, and the Roy Prairie, Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher should they be listed under a final rule (i.e., potential baseline conservation efforts). These project modifications would be considered part of the baseline in areas occupied by any of the six prairie species because they would be recommended regardless of whether critical habitat is designated, for the purpose of avoiding jeopardy to the listed species present. Although the standards for jeopardy and adverse modification of critical habitat are not the same, because the degradation or loss of habitat is a key threat to each of the six prairie species, our jeopardy analyses for these species would already consider the potential for project modifications to avoid the destruction of habitat; therefore recommendations to avoid jeopardy would also likely avoid adverse modification or destruction of critical habitat for these species. Because the ability of each of the prairie species to exist is very closely tied to the quality of their habitats, significant alterations of their occupied habitat may result in jeopardy as well as adverse modification. Therefore, the Service anticipates that section 7 consultation analyses will likely result in no difference between recommendations to avoid jeopardy or adverse modification in occupied areas of habitat. The Service extends this conclusion to certain subunits populated by the streaked horned lark, in instances where the species may be temporarily absent due to its migratory behavior (in other words, areas utilized by the lark are considered occupied for the purposes of section 7 consultation, even if the lark is seasonally absent). In addition, a significant area of proposed critical habitat for the lark is already designated as critical habitat for the western snowy plover, the conservation measures for which provide additional protection that is considered part of the baseline.

Unoccupied habitat is analyzed differently. Project modifications suggested by the Service in subunits unoccupied by the subject species would not be made under the jeopardy standard imposed by the presence of a listed species. Rather, in unoccupied subunits, any project modifications that may arise would be attributable to the consideration under section 7 consultation of possible destruction or adverse modification of critical habitat; hence any such modifications would be a consequence of the critical habitat designation. Any changes that result in an impact on economic activity, therefore, would be characterized as incremental rather than baseline impacts.

Of the proposed critical habitat subunits, a total of 12 are not occupied by one of the subspecies for which they are proposed (11 for the Taylor's checkerspot butterfly, and 1 for the streaked horned lark). While the analysis allows for the possibility of incremental project modifications within these subunits, in practice we expect few incremental impacts to occur. This conclusion is based first on the significant overlap of these sites with existing conserved areas and habitat conservation plans, minimizing the need for material additional conservation activities as a result of critical habitat designation. In addition, incremental impacts for subunits unoccupied by Taylor's checkerspot butterfly are not expected in those subunits shared with any of the Mazama pocket gopher subspecies, as conservation measures for the gopher are expected to coincide year-round with measures that may also be recommended for the Taylor's checkerspot butterfly.

The one area where some incremental impacts may occur is located on Joint Base Lewis-McChord (JBLM). Three distinct parcels within this site contain unoccupied habitat for the Taylor's checkerspot butterfly and experience regular recreational use. Importantly, none of these parcels overlaps with habitat for any of the Mazama pocket gopher subspecies. But for these JBLM areas, the analysis concludes that incremental impacts of critical habitat designation will be limited to additional administrative costs to the Service, Federal agencies, and private third parties of considering critical habitat as part of section 7 consultation.

The designation of critical habitat may, under certain circumstances, affect actions that do not have a Federal nexus and thus are not subject to the provisions of section 7 under the Act. Indirect impacts are those unintended changes in economic behavior that may occur outside of the Act, through other Federal, State, or local actions, and that are caused by the designation of critical habitat. Chapter 2 of the DEA discusses the common types of indirect impacts that may be associated with the designation of critical habitat, such as potential time delays, regulatory uncertainty, and negative perceptions related to critical habitat designation on private property. These types of impacts are not always considered incremental. In the case that these types of conservation efforts and economic effects are expected to occur regardless of critical habitat designation, they are appropriately considered baseline impacts in this analysis.

Critical habitat may generate incremental economic impacts through implementation of additional conservation measures (beyond those recommended in the baseline) and additional administrative effort in section 7 consultation to ensure that projects or activities do not result in adverse modification of critical habitat. However, as described above and in Chapter 3 of the DEA, where critical habitat is considered occupied by any of the prairie species, critical habitat designation is expected to have a more limited effect on economic activities, since section 7 consultation would already occur due to the presence of the species. Although we recognize that the standards for jeopardy and adverse modification of critical habitat are not the same, with the former focusing more closely on effects to conservation of the species, in this case and for the reasons described above, the designation of critical habitat in occupied areas would

likely result only in incremental effects over and above the costs associated with consultation due to the presence of the species. Furthermore, where proposed critical habitat for the streaked horned lark overlaps with the existing critical habitat designation for the western snowy plover, economic activities are already subject to conservation measures that would benefit the streaked horned lark and its critical habitat. The focus of the DEA is projects that are reasonably likely to occur, including but not limited to activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. All of the projects considered reasonably likely to occur in the DEA are in units that are occupied by at least one of the prairie species, with the exception of recreation activities on unoccupied subunits on JBLM described above. Critical habitat designation is therefore expected to have a limited incremental impact in most areas.

For all ongoing and currently planned projects identified in the DEA, conservation offsets have been implemented or are currently being planned, even absent critical habitat designation that the Service believes may also avoid adverse modification, although such projects would need to be evaluated on a case-by-case basis if and when critical habitat is designated. Therefore, for most of these projects, incremental impacts of critical habitat designation are expected to be limited to the costs of additional administrative effort in section 7 consultations to consider adverse modification, as described in Chapter 3 of the DEA. The exception is some unoccupied subunits on JBLM currently utilized for recreation that the DEA anticipates incurring some level of unquantified incremental impacts to recreation.

The DEA monetizes the incremental impacts of critical habitat designation where sufficient data are readily available. We estimate that the critical habitat designations for all six prairie species would result in a total present value impact of approximately $793,574 (7 percent discount rate) to activities across all proposed units (a total annualized impact of $70,007 over 20 years). Airport and agricultural activities are likely to be subject to the greatest incremental impacts at $550,000 over the next 20 years, followed by recreation and habitat management at $110,000, military activities at $55,000, transportation at $34,000, and electricity distribution and forestry activities at $9,300. Of these costs, the analysis estimates that approximately 51 percent will be incurred by the Service, 31 percent by Federal action agencies, and 18 percent by third parties. In other words, Federal agencies will incur approximately 82 percent of the estimated economic impacts of the designation.

As stated earlier, we are soliciting data and comments from the public on the draft economic analysis and our amended required determinations section, as well as all aspects of the proposed rules. The final rules may reflect revisions to the proposed rules or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if the Secretary determines that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our October 11, 2012 (77 FR 61938), and December 11, 2012 (77 FR 73770), proposed rules, we indicated that we would defer our determination of compliance with some statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the draft economic analysis data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 13211 (Energy, Supply, Distribution, and Use).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we are certifying that the critical habitat designation for the six prairie species, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The regulatory mechanism through which critical habitat protections are enforced is section 7 of the Act, which directly regulates only those activities carried out, funded, or permitted by a Federal agency. By definition, Federal agencies are not considered small entities, although the activities they may fund or permit may be proposed or carried out by small entities. Given the SBA guidance described above, our analysis considers the extent to which

this designation could potentially affect small entities, regardless of whether these entities would be directly regulated by the Service through the proposed rule or by a delegation of impact from the directly regulated entity.

Our screening analysis focuses on small entities that may bear the incremental impacts of proposed critical habitat as quantified in Chapter 3 of the DEA (IEc 2013). As discussed in greater detail in Chapters 2 and 3, the incremental impacts of the designation of critical habitat in this case are likely to be limited to administrative costs of section 7 consultations. Small entities may participate in section 7 consultation as a third party (the primary consulting parties being the Service and the Federal action agency). It is therefore possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the species. Additional incremental costs of consultation that would be borne by the Federal action agency and the Service are not relevant to this screening analysis as these entities (Federal agencies) are not small.

To determine if any of the rules could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as: Military activities; airport operations and agriculture; electricity and forestry activities; dredging; and recreation and habitat management. After determining which areas of economic activities may potentially be affected, we then apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only has regulatory effects on activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and will not be affected by critical habitat designation. If listed under the Act, in areas where any of the six prairie species are present, Federal agencies would already be required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

As described in Chapter 3 of the DEA, activities that may be affected by the designations include: Military activities; airport operations and agriculture; electricity and forestry activities; dredging; and recreation and habitat management. However, we do not expect critical habitat designation to result in impacts to small entities under the categories of military activities, dredging, transportation, or electricity distribution and forestry activities, for the reasons described here:

- *Military Activities.* Chapter 3 discusses forecast consultations between JBLM and the Service related to military training operations, JBLM's habitat restoration operations, and finalization of JBLM's INRMP. These consultations are expected to occur between staff at JBLM and the Service without third-party involvement. As JBLM is a Federal entity, it is by definition not small, and thus no impacts to small entities are expected related to these consultations.
- *Dredging.* Chapter 3 discusses the potential for the U.S. Army Corps of Engineers (Corps) to incur incremental administrative costs associated with consultations addressing the Corps' dredging program in the lower Columbia River channel. These consultations are expected to occur between staff at the Corps and the Service without third-party involvement. As the Corps is a Federal entity, it is by definition not small, and thus no impacts to small entities are expected related to these consultations.
- *Transportation.* Chapter 3 discusses the potential for critical habitat to affect roadway construction and maintenance. These impacts are limited to consultations between State Departments of Transportation and the Service, and they are not expected to involve third parties. As State agencies are by definition not small entities, we do not expect any impacts to small entities related to transportation.
- *Electricity Distribution and Forestry Activities.* Chapter 3 discusses the potential for critical habitat designation to affect electricity distribution and forestry activities. The only electricity distribution activity within the proposed critical habitat is carried out by the Bonneville Power Administration (BPA). The BPA is a Federal entity and, therefore, is not considered small. As such, we do not anticipate impacts to small entities related to BPA's electricity distribution activities. The DEA forecasts no incremental costs for forestry activities. Therefore, we do not anticipate impacts to small entities related to such activities.

The DEA indicates that any estimated incremental impacts that may be borne by small entities are limited to the administrative costs of section 7 consultation related to airport operations, agriculture, and recreation and habitat management. These potential impacts are described below.

- *Airport Operations.* Chapter 3 of the DEA discusses the potential for this critical habitat designation to affect airports. Overall, 198 consultations are expected in relation to operations at seven airports over the next 20 years. Information on whether airports are considered small or large entities was available for some airports and not available for others. Information to determine whether individual airports are small entities was not available. For the purposes of the DEA, we make the simplifying and conservative assumption that all airports within the proposed critical habitat designations are small entities. These seven entities represent 3 percent of the total small Other Airport Operations (NAICS code 488119) entities within the proposed critical habitat designations. If all 198 consultations were spread evenly across the seven airports, the cost per entity to participate in forecasted consultations is approximately $875 to $8,750 in any given year, or 0.01 to 0.1 percent of annual revenues per small entity.
- *Agricultural Activities.* Chapter 3 of the DEA forecasts two projects related to agriculture, one at Rock Prairie and one on M-DAC farms, which may involve small entities within the proposed critical habitat designations over the next 20 years. Assuming that all agriculture and grazing impacts are borne by two small private entities, this amounts to less than one affected entity per year. The per entity impact ranges from approximately $875 to $1,750, representing less than 2 percent of annual revenues.

Recreation and Habitat Management: Chapter 3 discusses the potential for critical habitat to affect recreational uses, particularly those associated with hiking, horseback riding, and dog walking, and habitat management efforts

on State, local, and privately owned lands, and on JBLM lands. Incremental habitat restoration impacts are associated with administrative costs of consultation and do not include the cost of restoration actions. A diverse group of Federal and State agencies, county-level governments, and private nonprofit organizations may be subject to the administrative burden of these consultations. Federal entities are not considered small. Additionally, both counties potentially subject to administrative costs associated with these activities, Thurston and Benton Counties, Washington, have populations over 50,000 and do not meet the small entity size standard for government jurisdictions. Therefore, we forecast three such projects within the study area that may involve small entities—Wolf Haven International, Whidbey/Camano Land Trust, and the Pacific Rim Institute for Environmental Stewardship—over the next 20 years. Assuming that all recreation and habitat restoration impacts are borne by these three small private entities, this amounts to less than one affected entity per year. These three entities represent 9 percent of the total small Environment, Conservation and Wildlife Organizations (NAICS code 813312) entities within proposed critical habitat. The per entity impact, ranging from approximately $875 to $2,625, represents less than 1 percent of annual revenues.

Recreators at JBLM may incur unquantified losses in economic surplus in the form of reduced or restricted recreational use of JBLM lands proposed as critical habitat. However, because the recreators leasing JBLM lands are individuals, not entities, we do not address these impacts in our distributional analysis.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. In doing so, we focus on the specific areas proposed to be designated as critical habitat and compare the number of small business entities potentially affected in that area with other small business entities in the region, instead of comparing the entities in the proposed area of designation with entities nationally, which is more commonly done. This analysis results in an estimation of a higher number of small businesses potentially affected.

In summary, we have considered whether this designation, if finalized as proposed, will result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the SBA, stakeholders, and Service files. In these proposed rulemakings, we calculate that from 0.1 to 9 percent of the total small entities engaged in airport operations, agricultural activities, or recreation and habitat management may be affected if and when a final rule becomes effective (IEc 2013, p. A–7), and we do not consider this to be a substantial number of small entities. If we were to calculate that value based on the proportion nationally, then our estimate would be significantly lower. In addition, potential economic impacts to small entities are conservatively estimated as less than 2 percent of annual revenues for entities in the agricultural industry and less than 0.1 percent of entities in airport operations or environment, conservation, and wildlife organizations (IEc 2013, p. A–7), which we do not consider to be significant economic impacts. Following our evaluation of potential effects to small business entities from these proposed rulemakings, we conclude that the number of potentially affected small businesses is not substantial, and that the economic impacts are not significant. Therefore, we are certifying that the designation of critical habitat for the six prairie species will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. Recognizing that this analysis considered the potential impact of all six prairie species collectively, we additionally assert that by extension, the individual impact of any one of the six species under consideration will be even less; therefore we additionally certify that the designation of critical habitat for any one of the six prairie species—Taylor's checkerspot butterfly, streaked horned lark, or Roy Prairie, Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher—will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration.

- Reductions in crude oil supply in excess of 10,000 barrels per day (bbls);
- Reductions in fuel production in excess of 4,000 barrels per day;
- Reductions in coal production in excess of 5 million tons per year;
- Reductions in natural gas production in excess of 25 million mcf (1,000 cubic feet) per year;
- Reductions in electricity production in excess of 1 billion kilowatts-hours per year or in excess of 500 megawatts of installed capacity;
- Increases in energy use required by the regulatory action that exceed the thresholds above;
- Increases in the cost of energy production in excess of 1 percent;
- Increases in the cost of energy distribution in excess of 1 percent; or
- Other similarly adverse outcomes.

As described in Chapter 3 of the DEA, the proposed critical habitat designation is anticipated to affect electricity distribution activities in seven subunits of proposed critical habitat, primarily

for the Taylor's checkerspot butterfly. However, impacts to these activities are limited to the administrative costs of consultation, and no reductions in electricity production are anticipated. Furthermore, given the small fraction of projects affected (two consultations over 20 years), consultation costs are not anticipated to increase the cost of energy production or distribution in the United States in excess of 1 percent. Thus, none of the nine threshold levels of impact listed above is exceeded. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Authors

The primary authors of this notice are the staff members of the Washington Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 26, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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Notices

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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

Office of the Secretary

Privacy Act of 1974; Proposed New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed new system of records

SUMMARY: As required by the Privacy Act of 1974, the U.S. Department of Agriculture (USDA) is publishing for comment a proposed new system of records, Grain Inspection, Packers and Stockyards Administration, USDA/GIPSA–1, Packers and Stockyards Automated System (PAS). PAS will be used by the Grain Inspection, Packers and Stockyards Administration (GIPSA) to enforce the Packers and Stockyards (P&S) Act of 1921, as amended. PAS, an automated information management system, integrates case file management, data monitoring, and reporting into a single enterprise application that shares data across organizational units.

DATES: This notice will be adopted without further publication in the **Federal Register** on May 13, 2013 unless notified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that a portion of the system that describes the "routine uses" of the system be published for comment, USDA invites comments on all portions of this notice. Comments must be received by the contact person listed below on or before May 3, 2013.

ADDRESSES: You may submit comments, identified by docket number USDA/Grain Inspection, Packers and Stockyards Administration, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 690–2173
- *Mail:* Irene Omade, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530–S, Washington, DC 20250–3642.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Joanne C. Peterson, GIPSA Privacy Act Officer, 202–720–8087, 1400 Independence Avenue SW., Room 2548–S, Washington, DC 20250–3642. For privacy issues, please contact: Ravoyne Payton, Chief Privacy Officer, Cyber and Privacy Policy and Oversight, Office of the Chief Information Officer, Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended (5 U.S.C. 552a), USDA announces a proposed new system of records titled "USDA/GIPSA–1, Packers and Stockyards Automated System (PAS)," which is managed by the Packers and Stockyards (P&S) Program—a mission area of USDA's GIPSA. The P&S Program administers the Packers and Stockyards Act, which was enacted by Congress to ensure fair competition and fair trade practices; to safeguard farmers and ranchers; to protect consumers; and to protect members of the livestock, meat, and poultry industries from unfair, deceptive, unjustly discriminatory, and monopolistic practices, 7 U.S.C. 181 *et seq.* Through its oversight activities, including monitoring programs and conducting reviews and investigations, the P&S Program fosters fair competition, provides payment protection, and guards against deceptive and fraudulent trade practices that affect the movement and price of most animals and their products. PAS integrates case file management, data monitoring, and reporting into a single enterprise application that shares data across organizational units. PAS is comprised of two components—Enterprise Content Management (ECM) and the Account Management System (AMS). The heart of the system is the ECM component, which manages the workflows that were developed from the P&S Program's core business processes and the documents that are generated as part of those processes, such as complaints from poultry contract growers, case files of investigations, and monitoring reviews of scale tests. These workflows include Registration; Bonding; Investigation; Regulatory Activities; Enforcement; Bond and Trust Claims; Bond Terminations and Expirations; and Collection of Mandatory Reports.

The AMS component stores and manages regulated entity business data, supports queries, generates batch letters, and provides reporting capabilities. The following information is contained in PAS: name, trade name, business entity type, type of organization, mailing and operating address, telephone numbers, type of livestock handled, character of business, ownership information, scales and facilities used or owned by the business, Web sites where the regulated entities will operate, custodial account information (for market agencies selling on commission), bond information, and information registered entities submit in annual or special reports.

The information collected and maintained in PAS is used to administer the registration, posting, and bonding provisions under the P&S Act; to adjudicate contract disputes; and to enforce the P&S Act and the regulations issued there under. Routine uses of the records maintained in PAS include disclosure to the Department of Justice; courts or adjudicative bodies; Members of Congress or Congressional staff members; Federal, state, foreign, or other public authorities; the National Archives and Records Administration; contractors, grantees, experts, consultants, or volunteers; and/or appropriate agencies, entities, and persons regarding the security of PAS.

In accordance with 5 U.S.C. 552a(r), USDA has provided a report of this system of records to the Office of Management and Budget and to Congress.

Thomas J. Vilsack,
Secretary.

USDA/GIPSA–1

SYSTEM NAME:

Grain Inspection, Packers and Stockyards Administration, USDA/GIPSA–1, Packers and Stockyards Automated System (PAS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

PAS is physically located at the National Information Technology Center (NITC) in Kansas City, Missouri. PAS resides on computers of all users of the system who are located at GIPSA headquarters in Washington, DC; at regional offices that are located in Atlanta, Georgia; Des Moines, Iowa; and Denver, Colorado; and at resident agent offices that are dispersed across the United States. Resident agents are GIPSA employees stationed at various locations throughout the United States. Paper records are located in GIPSA offices, including resident agent offices, nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in this system relate to entities and individuals that are regulated under the P&S Act, which include stockyard owners, market agencies, dealers, packers, swine contractors, and live poultry dealers. Also included is information regarding individuals who are interviewed by P&S Program investigatory personnel to provide statements and affidavits in connection with investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Business owners' names, trade names; home and business operating addresses; telephone numbers, type of livestock handled; character of business; ownership information; name and location of posted stockyards, auction markets, and feedlots; Web sites where they will operate, and custodial account numbers (for market agencies selling on commission).
- Packers, market agencies, and dealers who apply for a surety bond to meet the bonding requirements of the P&S Act provide bond number, principal name and address, surety name and address, condition of the bond, and power of attorney.
- Certain producers and growers file trust claims against packers and live poultry dealers for delayed or nonpayment of livestock and poultry transactions. Information provided includes name and address of claimant, name and address of respondent, date of transaction, amount claimed, name and address where transaction occurred, description of transaction, terms of contract, supporting documentation, and evidence.
- P&S Program investigative records and supporting documentation obtained from P&S investigative personnel, which includes names, addresses, and employment information regarding individuals who are interviewed and who provide statements and affidavits. P&S personnel also collect documents that reflect business transactions and banking information, such as account information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 222; 7 U.S.C. 181 *et seq.*, generally.

PURPOSE(S):

PAS is an automated information management system that is used by GIPSA's P&S Program to manage and to track its workflow processes for regulatory activities and investigations in the livestock and poultry industries and to store records and data that are related to these activities. PAS also captures and maintains documents and data for business entities that are regulated under the P&S Act; financial instruments to ensure financial protection to parties involved in the livestock, meat, and poultry industries; and weight scales that are managed by parties who conduct business in the livestock and meat industries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in PAS may be disclosed outside USDA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. USDA or any component thereof;

2. Any employee of USDA in his/her official capacity;

3. Any employee of USDA in his/her individual capacity where DOJ or USDA has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which USDA collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the written request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for USDA, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in PAS are stored electronically on magnetic disc, tape, digital media, and/or CD–ROM. PAS is a customized module within USDA's Enterprise Content Management (ECM), which is maintained by the Office of the Executive Secretariat. ECM is based upon a suite of document management applications that have been specifically designed for use by the employees and officers of USDA to manage documents associated with a wide range of administrative and business processes. PAS is hosted on servers located within secure computing environments at NITC in Kansas City, Missouri. Paper records are stored in GIPSA offices nationwide prior to scanning into PAS.

RETRIEVABILITY:

Records may be retrieved by applicant name, business entity name, owner name, facility name, respondent name, complainant name, alleged violator's name, and investigation or regulatory activity identification case number.

SAFEGUARDS:

Computer records in PAS are safeguarded in accordance with applicable rules and policies, including all applicable USDA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Access to PAS is limited to those who have a need to know. Permission level assignments allow users access only to those functions for which they are authorized to perform their official duties. System users, managers, and PAS Administrators have access to the data in the system. Access is controlled by the eAuthentication System (eAuth). Once an eAuth account has been created, the PAS Administrator will grant access to the user based on his/her position and title. Paper records are maintained in locked cabinets and in desks that are located in physically secured rooms.

RETENTION AND DISPOSAL:

Certain records in PAS are maintained for 3 years; others are maintained for 5 years, in accordance with General Records Schedule 20, Electronic Records, items 2a and Other Reports covered under the GRS 20, 11(a)1. Paper records are retained in accordance with GRS 20, items 1a, 2a, and 16.

SYSTEM MANAGER AND ADDRESS:

GIPSA, P&S Program, 1400 Independence Avenue SW., Room 2055–S, Washington, DC 20250–3601.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at *http://www.da.usda.gov/foia.htm* under "USDA FOIA Points of Contact." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 7 CFR part 1, subpart G.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information is obtained (1) From entities and individuals who are doing business in the livestock, meat, and poultry industries and who register under the P&S Act to conduct such business; (2) from individuals and businesses who file claims against registrants; (3) financial institutions, attorneys, accountants, and insurance companies; and (4) by GIPSA employees who collect the information during the course of their official responsibilities, such as investigative personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–07671 Filed 4–2–13; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

Public Availability of FY 2012 Service Contract Inventories

AGENCY: Office of Procurement and Property Management, Departmental Management, Department of Agriculture.

ACTION: Notice of public availability of FY 2012 Service Contract inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Agriculture is publishing this notice to advise the public of the availability of the FY 2012 Service Contract inventory. This inventory provides information on FY 2012 service contract actions over $25,000. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* Department of Agriculture has posted its inventory and a summary of the inventory on the Office of Procurement and Property Management homepage at the following link: *http://www.dm.usda.gov/procurement/.*

FOR FURTHER INFORMATION CONTACT: Al Muñoz, Office of Procurement and Property Management, at (202) 720–1273 or by mail at OPPM, Mail Stop 9304, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–9303. Please cite "2012 Service Contract Inventory" in all correspondence.

Signed in Washington, DC, on March 4, 2013.

Lisa M. Wilusz,

Director, Office of Procurement and Property Management.

[FR Doc. 2013–07053 Filed 4–2–13; 8:45 am]

BILLING CODE 3410–TX–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: The meeting will convene at 6:30 p.m. PDT on April 19, 2013.

PLACE: The meeting will be held at Richmond Memorial Auditorium and Convention Center located at 403 Civic Center Plaza, Richmond, CA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: CSB investigators will present a proposed interim report and safety recommendations to the Board Members based on the CSB's investigation into a hydrocarbon release and fire that occurred at the Chevron Refinery in Richmond, CA on August 6, 2012.

CSB Investigators have determined that nineteen Chevron employees were engulfed in a vapor cloud formed by the hydrocarbon release. Eighteen employees escaped before the fire started, and one employee escaped without injury after the fire began. Six employees suffered minor injuries. More than 15,000 residents in the surrounding area sought treatment at area medical facilities as a result of the incident. Production at the Chevron facility was suspended for months following the accident.

Following the staff presentation the Board will hear brief comments from the public.

Following the conclusion of the public comment period, the Board will consider and may vote to approve the proposed interim report and safety recommendations. All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No proposed factual findings, analyses, or recommendations presented by staff should be considered final until the Board has voted to approve them. The meeting will be free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the "Contact Person for Further Information," at least five business days prior to the meeting.

The CSB is an independent Federal agency charged with investigating industrial accidents that result in the release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of accidents, including physical causes such as equipment failure, as well as inadequacies in regulations, industry standards, and safety management systems.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary J. Cohen, Communications Manager, *hillary.cohen@csb.gov* or 202–261–7600. General information about the CSB can be found on the agency Web site at: *www.csb.gov*.

Dated: April 1, 2013.

Daniel Horowitz,

Managing Director.

[FR Doc. 2013–07896 Filed 4–1–13; 4:15 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1892]

Reorganization of Foreign-Trade Zone 133 Under Alternative Site Framework; Quad-Cities, Iowa/Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Quad-City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 133, submitted an application to the Board (FTZ Docket B–63–2012, filed 08/08/2012) for authority to reorganize under the ASF with a service area of Henderson, Henry, Mercer, Rock Island and Warren Counties, Illinois and Cedar, Clinton, Des Moines, Dubuque, Henry, Jackson, Johnson, Jones, Lee, Louisa, Muscatine, Scott and Washington Counties, Iowa, within and adjacent to the Davenport, Iowa-Moline and Rock Island, Illinois Customs and Border Protection port of entry, and FTZ 133's existing Sites 1 through 5 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 48959–48960, 8/15/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 133 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1 through 5 if not activated by March 31, 2018.

Signed at Washington, DC, this 27th day of March 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–07727 Filed 4–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1886]

Grant of Authority; Establishment of a Foreign-Trade Zone Under the Alternative Site Framework Chenango County, New York

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, Chenango County, New York (the Grantee) has made application to the Board (B–56–2012, docketed 7/30/2012), requesting the establishment of a foreign-trade zone under the ASF with a service area of Chenango County, New York, adjacent to the Syracuse Customs and Border Protection port of entry, and including proposed Sites 1 and 2, which would be categorized as usage-driven sites;

Whereas, notice inviting public comment has been given in the **Federal Register** (77 FR 46023–46024, 8/02/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of

establishing a foreign-trade zone, designated on the records as Foreign-Trade Zone No. 285, as described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 1 and 2 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by March 31, 2016.

Signed at Washington, DC, this 25th day of March 2013.

Rebecca Blank,

Deputy Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–07726 Filed 4–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–90–2012]

Foreign-Trade Zone 26—Atlanta, Georgia, Authorization of Production Activity, Perkins Shibaura Engines, LLC (Diesel Engines), Griffin, Georgia

On November 29, 2012, Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Perkins Shibaura Engines, LLC, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 26–Site 6, in Griffin, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 75406–75407, 12–20–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: March 29, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–07740 Filed 4–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 3, 2013.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon 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) 482–3692 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2012, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy.[1] Pursuant to requests from interested parties, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period July 1, 2011, through June 30, 2012: Alberto Poiatti S.p.A (Poiatti), Delverde Industrie Alimentari S.p.A. (Delverde), Industria Alimentare Colavita, S.p.A. (Indalco), Pasta Lensi S.r.L. (Lensi), Pastificio Attilio Mastromauro-Pasta Granoro S.r.L. (Granoro), Pastificio Gallo Natale & F. Ili S.r.L. (Gallo), Fiamma Vesuviana S.r.L. (Fiamma), Pastificio Zaffiri S.r.L (Zaffiri), Rummo S.p.A. Molino e Pastificio (Rummo), Tandoi Filippo e Adalberto Fratelli S.p.A. (Tandoi), and Valdigrano di Flavio Pagani S.r.L. (Valdigrano).[2]

On August 31, 2012 the Department announced its intention to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data.[3] On September 24, 2012, the Department selected Indalco and Rummo as mandatory respondents.[4]

On November 30, 2012, Indalco and Lensi timely withdrew their respective requests for a review. Thus, on December 11, 2012, the Department selected Gallo and Granoro as additional mandatory respondents.

On February 8, 2013, the Department published a notice revoking Granoro from the antidumping duty order.[5] The effective date of Granoro's revocation from the antidumping duty order is July 1, 2011.[6]

Partial Rescission of the 2011–2012 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The instant review was initiated on August 30, 2012. *See Initiation.* Indalco and Lensi both withdrew their requests for a review on November 30, 2012, which is within the 90-day deadline. No other party requested an administrative review of these particular companies. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review of the antidumping duty order on certain pasta from Italy, in part, with respect to Indalco and Lensi.[7] Additionally, we are rescinding this review with respect to Granoro because this company has been revoked from the antidumping duty order.[8] The instant review will continue with respect to Poiatti, Delverde,[9] Gallo, Fiamma,

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 39216 (July 2, 2012).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 52688 (August 30, 2012) (*Initiation*).

[3] *See* Memorandum from George McMahon through James Terpstra to Melissa Skinner titled, "Customs and Border Protection Data for Selection of Respondents for Individual Review," dated August 31, 2012.

[4] *See* Memorandum from George McMahon through James Terpstra to Melissa Skinner titled, "Selection of Respondents for Individual Review," dated September 24, 2012.

[5] *See Certain Pasta From Italy: Notice of Final Results of 15th Antidumping Duty Administrative Review, Final No Shipment Determination and Revocation of Order, in Part; 2010–2011,* 78 FR 9364 (February 8, 2013) (*Final Results*), and accompanying Issues and Decision Memorandum for additional details.

[6] *See* id. *See also* CBP Public Message Number: 3057301, dated February 26, 2013.

[7] *See, e.g., Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781 (May 11, 2009); *see also Carbon Steel Butt-Weld Pipe Fittings from Thailand: Rescission of Antidumping Duty Administrative Review,* 74 FR 7218 (February 13, 2009).

[8] *See Final Results.*

[9] On September 25, 2012, Delverde submitted a "qualified no-shipment letter" in which Delverde declared that "it made no shipments of subject merchandise during the POR, because it was excluded from the antidumping duty order in the original investigation." We are currently conducting

Continued

Zaffiri, Rummo, Tandoi, and Valdigrano.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, Indalco and Lensi, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2011, through June 30, 2012, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in the amount of antidumping and/or countervailing duties reimbursed.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

a Changed Circumstances Review of Delverde to determine whether Delverde is the successor-in-interest to the company that was excluded from the order.

Dated: March 27, 2013.

Edward C. Yang,

Senior Director, China/Non-Market Economy Unit.

[FR Doc. 2013–07746 Filed 4–2–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fish and Seafood Promotion

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 3, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mike Travis, (301) 427–8504 or *Mike.Travis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Under the authority of the Fish and Seafood Promotion Act of 1986, information collected under this program is used to promote domestically-produced fish products. The information collection requirements can be broadly divided into two categories: (1) Information required of an individual or organization applying for consideration to form a seafood promotion council, and (2) the information required of a formed and operating council, or permitted for its participants. Information required of an individual or organization applying for consideration to form a council consists of an "application for charter" composed of three subparts: petition, proposed charter, and a list of eligible referendum participants. The information required of a formed and operating council, or permitted for its participants, is as follows: council submission of an annual plan, an annual budget, and an annual financial report; council submissions of semiannual progress reports; notice of assessments once a year; list of council nominations following a favorable referendum once a year; and meeting notices once a year.

II. Method of Collection

The respondent provides written notice. No form is used.

III. Data

OMB Control Number: 0648–0556.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Not-for-profit institutions; business or other for-profit organizations.

Estimated Number of Respondents: 3.

Estimated Time Per Response: 320 hours.

Estimated Total Annual Burden Hours: 960.

Estimated Total Annual Cost to Public: $30 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 28, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–07684 Filed 4–2–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Application Period for Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of extension for application period and request for applications.

SUMMARY: The ONMS is extending the deadline and seeking applications for the following vacant seats on the Monterey Bay National Marine Sanctuary Advisory Council: Commercial Fishing. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen should expect to serve until February 2016.

DATES: Applications are due by May 3, 2013.

ADDRESSES: Application kits may be obtained from 99 Pacific Street, Bldg. 455A, Monterey, CA 93940 or online at *http://montereybay.noaa.gov/*. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jacqueline Sommers, 99 Pacific Street, Bldg. 455A, Monterey, CA 93940, (831) 647–4247, *Jacqueline.Sommers@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council is a community-based group that was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel ("RAP") chaired by the Research Representative, the Sanctuary Education Panel ("SEP") chaired by the Education Representative, the Conservation Working Group ("CWG") chaired by the Conservation Representative, and the Business and Tourism Activity Panel ("BTAP") co-chaired by the Business/Industry Representative and Tourism Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi- monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. 1431, et seq. (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 28, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–07821 Filed 4–2–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability for Public Comment on the U.S. Integrated Ocean Observing System Advisory Committee; Committee Proposed Draft "IOOS Vision"

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Request for Public Comments.

SUMMARY: The U.S. Integrated Ocean Observing System (IOOS) Program in NOAA publishes this notice on behalf of the U.S. IOOS Advisory Committee (the Committee) to announce a 30-day public comment period for the draft "IOOS Vision" statement. The Committee and U.S. IOOS stakeholders will use the "IOOS Vision" to provide clear, consistent messaging on U.S. IOOS to public sectors on the mission and value of U.S. IOOS.

DATES: Written, faxed or emailed comments must be received no later than 5 p.m. eastern daylight time on May 3, 2013.

ADDRESSES: The draft "IOOS Vision" and additional background material on the Committee is available for review from the U.S. IOOS Web site URL: *http://www.ioos.noaa.gov/advisorycommittee*. For the public unable to access the Internet, printed copies can be requested by contacting the U.S. IOOS Program Office at the address below. The public is encouraged to submit comments electronically to *ioos.advisorycommittee@noaa.gov*. If you are unable to access the Internet, comments may be submitted via fax or regular mail. Faxed comments should be sent to 301–427–2073 with Attn: IOOS Advisory Committee. Comments may be submitted in writing to the U.S. IOOS Program Office Attention: IOOS Advisory Committee, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact the Jessica Snowden, Alternate DFO for the U.S. IOOS Advisory Committee, telephone: 301–427–2453; Email: *Jessica.snowden@noaa.gov*.

SUPPLEMENTARY INFORMATION: On 30 March 2009, President Barack Obama signed into law the Integrated Coastal and Ocean Observation System (ICOOS) Act of 2009 (the Act). Among the

requirements in the Act is a directive for the NOAA Administrator to establish the U.S. IOOS Advisory Committee, a federal advisory committee. The Committee provides advice as may be requested by the NOAA Administrator or the Interagency Ocean Observing Committee (IOOC). The Committee was officially established in August 2012.

Specific areas on which the Committee is to provide advice are: administration, operation, management, and maintenance of IOOS, including integration of Federal and non-Federal assets and data management and communication aspects of IOOS, and fulfillment of the purposes set forth in section 12302 of the ICOOS Act; expansion and periodic modernization and upgrade of technology components of IOOS; identification of end-user communities, their needs for information provided by IOOS, and the IOOS's effectiveness in disseminating information to end-user communities and the general public; and any other purpose identified by the NOAA Administrator or the IOOC.

The Committee is composed of members appointed by the NOAA Administrator. Members are qualified by education, training, and experience to evaluate scientific and technical information related to the design, operation, maintenance, or use of IOOS, or use of data products provided through IOOS. Members are appointed for 3-year terms, renewable once.

The Committee meets at least once each year, and at other times at the call of the NOAA Administrator, the IOOC, or the chairperson.

Dated: March 20, 2013.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Service and Coastal Zone Management.

[FR Doc. 2013–07592 Filed 4–2–13; 8:45 am]

BILLING CODE P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 April 2013, at 10:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington, DC, 20001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *CFAStaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: March 28, 2013 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2013–07694 Filed 4–2–13; 8:45 am]

BILLING CODE 6331–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0072]

Proposed Collection; Comment Request

AGENCY: United States Military Entrance Processing Command (USMEPCOM), Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Secretary of Defense announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 3, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to HQ USMEPCOM Program Analysis and Evaluation Directorate, ATTN: Ms. M. Lou Wetzel, 2834 Green Bay Road, North Chicago, IL 60064–3094; call at 847–688–3680, extension 7234 or email at *lou.wetzel@mepcom.army.mil.*

Title; Associated Form; and OMB Number: USMEPCOM MEPS Customer Satisfaction Survey, OMB Control Number 0704–0470.

Needs and Uses: This information collection requirement is necessary to aid the MEPS in evaluating effectiveness of current policies and core processes, identifying unmet customer needs, and allocating resources more efficiently.

Affected Public: Individuals or households.

Annual Burden Hours: 10,000.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

USMEPCOM, with headquarters in North Chicago, Ill., is a joint service command staffed with civilians and military from all five branches of service. The command, through its network of 65 Military Entrance Processing Stations, determines whether applicants are qualified for enlistment based on standards set by each of the services. USMEPCOM Regulation 601–23, *Enlistment Processing,* directs the information collection requirement for all 65 Military Entrance Processing Stations (MEPS) to obtain timely feedback on MEPS core processes. This web-based tool will allow MEPS to efficiently administer voluntary surveys on a routine basis to their primary

customer, the applicants, for military service. This information collection requirement is necessary to aid the MEPS in evaluating effectiveness of current policies and core processes, identifying unmet customer needs, and allocating resources more efficiently.

Dated: March 28, 2013.

Aaron Siegel,

Alternate OSD Federol Register Lioison Officer, Deportment of Defense.

[FR Doc. 2013–07691 Filed 4–2–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0070]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, Department of Defense, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 3, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Standardization Program Office (DSPO), Defense Logistics Agency, J–307, Attention: Ms. Karen Bond, 8725 John J. Kingman Road, Mail Stop 6233, Fort Belvoir, VA 20060–6221, or contact the Defense Standardization Program Office (DSPO) at (703) 767–6871.

Title; Associated Form; and OMB Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); Numerous Forms; 0704–0188.

Needs and Uses: The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense (DoD) contracts. The information collected will be used by DoD personnel and other DoD contractors to support the design, test, manufacture, training, operation, and maintenance of procured items, including weapons systems critical to the national defense.

Affected Public: Business or other for profit; not-for-profit institutions.

Annual Burden Hours: 26,915,328.

Number of Respondents: 944.

Responses Per Respondent: 432.

Average Burden Per Response: 66 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense contracts. Information collection requests are contained in DoD contract actions for supplies, services, hardware, and software. This information is collected and used by DoD and its component Military Departments and Agencies to support the design, test, manufacture, training, operation, maintenance, and logistical support of procured items, including weapons systems. The collection of such data is essential to accomplishing the assigned mission of the Department of Defense. Failure to collect this information would have a detrimental effect on the DoD acquisition programs and the National Security. Information used to prepare the burden hours is contained in the ASSIST Online database.

Dated: March 28, 2013.

Aaron Siegel,

Alternate OSD Federol Register Lioison Officer, Deportment of Defense.

[FR Doc. 2013–07690 Filed 4–2–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0071]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 3, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, ATTN: JFBDA—Mr. Charles Moss, Room 1569, Cleveland, OH 44199.

Title, Associated Form, and OMB Number: Physician Certificate for Child Annuitant, DD Form 2828, 0730–0011.

Needs and Uses: This form is required and must be on file to support an incapacitation occurring prior to age 18. The form provides the authority for the Directorate of Annuity Pay, Defense Finance and Accounting Service—Cleveland to establish and pay a Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) annuity to the incapacitated individual.

Affected Public: Incapacitated child annuitants, and/or their legal guardians, custodians and legal representatives.

Annual Burden Hours: 240 hours.

Number of Respondents: 120.

Responses Per Respondent: 1.

Average Burden Per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The form will be used by the Directorate of Annuity Pay, Defense Finance and Accounting Service—Cleveland (DFAS–CL/JFBDA, in order to establish and start the annuity for a potential child annuitant. When the form is completed, it will serve as a medical report to substantiate a child's incapacity. The law requires that an unmarried child who is incapacitated must provide a current certified medical report. When the incapacity is not permanent a medical certification must be received by DFAS–CL/JFBDA every two years in order for the child to continue receiving annuity payments.

Dated: March 28, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–07689 Filed 4–2–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy Advisory Panel; Cancellation

AGENCY: Department of the Navy, DoD.

ACTION: Notice of cancellation.

SUMMARY: The Department of the Navy announces the cancellation of the Secretary of the Navy Advisory Panel's partially closed meeting on April 18, 2013 from 8:30 a.m. to 4 p.m., as published in the **Federal Register**, March 28, 2013.

FOR FURTHER INFORMATION CONTACT: CAPT Peter J. Brennan, SECNAV Advisory Panel, Office of the Deputy Under Secretary of the Navy (Plans, Policy, Oversight & Integration), 1000 Navy Pentagon, Washington, DC 20350–1000, 703–695–3032.

Dated: March 28, 2013.

L.R. Almand,

Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2013–07830 Filed 4–2–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0039]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Child Care Access Means Parents in School Application Package

AGENCY: Department of Education (ED), Office of Postsecondary Education (OPE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before May 3, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0039 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Child Care Access Means Parents in School Application Package.

OMB Control Number: 1840–0737

Type of Review: a reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 350

Total Estimated Number of Annual Burden Hours: 8,750

Abstract: The Child Care Access Means Parents In School (CCAMPIS) Application requests information from applicants during the competitive phase. The information collected is reviewed by non-federal reviewers to determine which applicants meet the eligibility criteria to be awarded funds under the CCAMPIS program to assist awardees with subsidizing the child care fees of qualifying student-parents enrolled at the awarded institution.

Dated: March 29, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–07756 Filed 4–2–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0040]

Agency Information Collection Activities; Comment Request; Survey on the Use of Funds under Title II, Part A: Improving Teacher Quality State Grants—State-Level Activity Funds

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing: A new information collection.

DATES: Interested persons are invited to submit comments on or before June 3, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0040 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey on the Use of Funds under Title II, Part A: Improving Teacher Quality State Grants—State-Level Activity Funds.

OMB Control Number: 1810–New.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 260.

Abstract: The reauthorized Elementary and Secondary Education Act (ESEA) places a major emphasis on teacher quality as a significant factor in improving student achievement. Under ESEA, Title II, Part A provides funds to states (SEAs) and school districts (LEAs) to conduct a variety of teacher-related reform activities. ESEA funds can be used for a variety of teacher quality activities in any subject area. Although the majority of funds are provided to LEAs, allowable SEA uses of funds include: Reforming teacher and principal certification (including recertification) and licensure to ensure that teachers have the necessary subject-matter knowledge and teaching skills in the subjects they teach; and providing support to teachers and principals through programs such as teacher mentoring, team teaching, reduced class schedules, intensive professional development, and using standards or assessments to guide beginning teachers; and carrying out programs to establish, expand, or improve alternative routes for state certification for teachers and principals (especially in mathematics and science) that will encourage highly qualified individuals with at least a baccalaureate degree; and developing and implementing effective mechanisms that help LEAs and schools recruit and retain highly qualified teachers, principals, and pupil services personnel; and reforming tenure systems, implementing teacher testing for subject-matter knowledge, and implementing teacher testing for state certification or licensure, consistent with Title II of the Higher Education Act.

Dated: March 28, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–07760 Filed 4–2–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Savings Performance Contracts

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

ACTION: Notice of request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) seeks comments and information regarding improvements to Energy Savings Performance Contracts (ESPCs). ESPCs allow Federal agencies to implement energy savings projects where the up-front capital cost is financed by an Energy Services Company (ESCO), who is then repaid from the agency's energy savings over a period of up to 25 years. The DOE Federal Energy Management Program (FEMP) is the lead agency program for providing implementing rules and policies regarding ESPCs. DOE FEMP strives to continuously improve the ESPC processes it is has implemented since 1996. DOE is publishing this RFI to obtain ideas and input from ESPC

stakeholders and other interested persons to facilitate further improvements to ESPCs.

DATES: Written comments and information are requested on or before May 3, 2013.

ADDRESSES: Interested persons may submit comments by any of the following methods. Your response should be in the form of a Word document, or a compatible format.

1. *Email:* to *femp@go.doe.gov*. Include "ESPC Comments" in the subject line of the message.

2. *Mail:* Mr. Randy Jones, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401, Telephone: (720) 356–1667, Email: *randy.jones@go.doe.gov*. Please submit one signed paper original.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Jones, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401, Telephone: (720) 356–1667, Email: *randy.jones@go.doe.gov*, or Ms. Michella Hill, Contracting Officer, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401, Telephone: (720) 356–1489, Email: *michella.hill@go.doe.gov*.

SUPPLEMENTARY INFORMATION: The Federal Energy Management Program (FEMP), within the DOE Office of Energy Efficiency and Renewable Energy (EERE), provides services, tools, and expertise to Federal agencies to help them achieve their legislated and executive-ordered energy, greenhouse gas, and water goals. These are delivered through project, technical, and program services. One of FEMP's major services is to support Federal agencies in identifying, obtaining, and implementing project funding for energy projects through the use of ESPCs.

ESPCs allow Federal agencies to accomplish energy savings projects without up-front capital costs. In an ESPC, a Federal agency contracts with an ESCO, following a comprehensive energy audit conducted by the ESCO of a Federal facility to identify improvements to save energy. In consultation with the Federal agency, the ESCO designs and constructs a project that meets the agency's needs and arranges the necessary funding. The ESCO guarantees that the improvements will generate energy cost savings sufficient to pay for the project over the term of the contract. After the contract ends, all additional cost savings accrue to the agency. Contract terms up to 25 years are allowed.

Under the ESPC statutes, DOE is required to develop methods and procedures for Federal agencies to implement the use of energy savings performance contracting. On April 10, 1995, DOE established the implementing procedures and regulations for ESPCs at 10 CFR part 436, Subpart B. (See, 60 FR 18334.)

To facilitate and accelerate the use of ESPCs, DOE has issued Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts designed to make ESPCs as practical and cost-effective as possible for use by Federal agencies. DOE awarded these "umbrella" contracts to ESCOs based on their ability to meet terms and conditions established in IDIQ contracts, and consistent with the ESPC regulations. DOE IDIQ contracts can be used by Federal agencies to achieve energy savings for any Federally-owned facility worldwide, by awarding Task Orders for ESPC projects at their facilities.

Since the inception of DOE's IDIQ contracts in 1996, numerous Federal agencies have used them to award more than 280 ESPC projects throughout the Federal government. More than $2.71 billion has been invested in Federal energy efficiency and renewable energy improvements. These improvements have resulted in more than 347.5 trillion Btu life-cycle energy savings and more than $7.18 billion of cumulative energy cost savings for the Federal Government.

While FEMP has provided implementing rules and policies regarding ESPCs, its efforts to promote and improve ESPC projects have been primarily through the DOE IDIQ contract vehicle. Over the course of the last 15 years, FEMP has continuously improved the ESPC IDIQ contract in many key areas, including contractor selection procedures, scope definition, Measurement and Verification (M&V), financing procurement, and definition of risk and responsibilities.

More detailed background and specifics of the current FEMP ESPC program can be found at: *http://www1.eere.energy.gov/femp/financing/espcs.html*.

More detailed information about the IDIQ contracts, FEMP's primary vehicle for implementation of ESPCs, including a generic version of the current contract, can be found at: *http://www1.eere.energy.gov/femp/financing/espcs_resources.html*.

More detailed information about the new FEMP streamlined ESPC ENABLE program for smaller facilities can be found at: *http://www1.eere.energy.gov/femp/financing/espc_enable.html*.

Issues on Which DOE Seeks Information:

This request for information is issued to solicit input on further potential improvements to ESPCs, with emphasis on improvements to the FEMP IDIQ contracts. Specifically, FEMP is interested in obtaining ideas and information in the following areas:

Speed to Award

- Decreasing the time from the point an agency decides to go forward (Issues Notice of Opportunity (NOO), Request for Proposals (RFP), etc.) to the time of award.
- Process improvements and simplifications, while maintaining technical and project management integrity.
- Addressing internal agency policies and processes to speed up key reviews, approvals, and decisions.

ESPC IDIQ Contract Improvements

- Opportunities and benefits relating to greater standardization of contract processes, terms and conditions across the Government.
- Comments on current IDIQ processes that allow contractor selection based on ESCO qualifications only, without the submission of a price proposal.
- Comments on structuring an ESPC IDIQ Contract so that new contractors may be added during the life of the contract based on meeting the same qualification criteria as specified in the original solicitation.
- Comments on a potential process where the technical criterion to receive an IDIQ ESPC contract from DOE are based partially or fully on meeting requirements of an impartial, national ESCO certification program.
- Comments on structuring an ESPC IDIQ Contract so that contractors can be removed during the life of the contract based on conditions specified in the IDIQ such as non-performance or lack of participation.
- Improvement of deliverables content and format (Investment Grade Audit, Commissioning Plans and Reports, Measurement and Verification Plans and Reports, etc.).

Increasing the Certainty of Energy Savings Persistence

- Improvements to Measurement and Verification methodologies, to achieve and maintain the greatest assurance of energy savings at the least cost.

Approaches To Encourage Innovative or Underutilized Energy Efficiency and Renewable Energy Technologies

- Approaches to increase confidence in investing in technologies with good potential but little implementation experience.

• Approaches to incentivize ESCOs to propose innovative or underutilized technologies.

Potential Improvements to the FEMP streamlined ENABLE Program for Smaller Facilities

• Improvements to the technical tools and contract templates that support project development and execution.

• Feedback on the process that is required by GSA Schedule 84, Special Identification Number 246–53 and use of the Schedule ordering process in general.

Disclaimer and Important Notes

This is an RFI issued solely for information and program planning purposes; this RFI does not constitute a formal solicitation for proposals or abstracts. Your response to this notice will be treated as information only. DOE will not provide reimbursement for costs incurred in responding to this RFI. Respondents are advised that DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this RFI. Responses to this RFI do not bind DOE to any further actions related to this topic.

Confidential Business Information

In accordance with 10 CFR 1004.11, any person submitting information he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including 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 email 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 a public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on March 28, 2013.

Timothy Unruh,

Program Manager, Federal Energy Management Program.

[FR Doc. 2013–07709 Filed 4–2–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2619–022]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 2619–022.

c. *Date Filed:* August 13, 2012 and supplemented January 10 and March 26, 2013.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Mission Hydroelectric Project.

f. *Location:* The Mission Hydroelectric Project is located on the Hiwassee River in Clay and Cherokee Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis Whitaker, Duke Energy—Lake Services, 526 S. Church St., Charlotte, NC, 28202, (704) 382–1594.

i. *FERC Contact:* Mary Karwoski at (202) 502–6543, or email: *mary.karwoski @ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 29, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlinesSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (p–2619–022) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by article 407 of the July 22, 2011 license, Duke Energy Carolinas, LLC requests Commission approval of a proposed shoreline management plan (SMP) for the project. The SMP defines shoreline management classifications for the shorelines within the project boundary, identifies allowable and prohibited uses within the shoreline areas, and describes the shoreline use permitting process.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–2619–022) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 27, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–07678 Filed 4–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–711–000

Applicants: WBI Energy Transmission, Inc.

Description: Non-Conforming Service Agreements DB Energy, Rainbow, NJR to be effective 4/1/2013

Filed Date: 3/26/13

Accession Number: 20130326–5209

Comments Due: 5 p.m. ET 4/8/13

Docket Numbers: RP13–712–000

Applicants: Natural Gas Pipeline Company of America

Description: Renaissance Negotiated Rate to be effective 4/1/2013

Filed Date: 3/26/13

Accession Number: 20130326–5294

Comments Duc: 5 p.m. ET 4/8/13

Docket Numbers: RP13–713–000

Applicants: Dominion Transmission, Inc.

Description: DTI—NAESB Extension of Time Removal to be effective 4/26/2013

Filed Date: 3/26/13

Accession Number: 20130326–5367

Comments Due: 5 p.m. ET 4/8/13

Docket Numbers: RP13–714–000

Applicants: Hardy Storage Company, LLC

Description: Hardy Cost of Service Extension

Filed Date: 3/26/13

Accession Number: 20130326–5379

Comments Due: 5 p.m. ET 4/8/13

Docket Numbers: RP13–715–000

Applicants: Natural Gas Pipeline Company of America

Description: Negotiated Rate—Integrys Energy to be effective 4/1/2013

Filed Date: 3/26/13

Accession Number: 20130326–5438

Comments Due: 5 p.m. ET 4/8/13

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–35–002

Applicants: Iroquois Gas Transmission System, L.P.

Description: 03/26/13 FERC Order 587–V NAESB 2.0 Extension Requirements to be effective 3/27/2013

Filed Date: 3/26/13

Accession Number: 20130326–5450

Comments Due: 5 p.m. ET 4/8/13

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 27, 2013.

Nathaniel J. Davis, Sr.

Deputy Secretary

[FR Doc. 2013–07683 Filed 4–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12690–003]

Public Utility District No. 1 of Snohomish County, WA; Notice of Technical Meeting

a. *Date and Time of Meeting:* April 18, 2013; 10 a.m. Pacific Time (1:00 p.m. Eastern Time).

b. *Place:* Telephone conference call.

c. *FERC Contact:* Stephen Bowler, *stephen.bowler@ferc.gov* or (202) 502–6861.

d. *Purpose of Meeting:* Discuss the change in the description of the turbine braking system for the proposed Admiralty Inlet Pilot Tidal Project included by Public Utility District No. 1 of Snohomish County, Washington in their comments filed with the Commission on February 14, 2013 in regard to the Environmental Assessment issued by the Commission on January 15, 2013.

e. *Proposed Agenda:* 1. Introduction; 2. Meeting objectives; and 3. Turbine braking system.

f. A summary of the meeting will be prepared for the project's record.

g. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please email Stephen Bowler at *stephen.bowler@ferc.gov* or call (202) 502–6861 by Monday, April 15, 2013, to RSVP and to receive specific instructions on how to participate.

Dated: March 27, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–07679 Filed 4–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP12–514–000]

Tennessee Gas Pipeline Company, LLC; Notice of Technical Conference

The Commission's January 17, 2013 Order in the above-captioned proceeding[1] directed that a technical conference be held to address issues raised by Tennessee Gas Pipeline Company, LLC's filing to modify the secondary in-the-path scheduling priority provisions of its FERC Gas Tariff.

Take notice that a technical conference will be held on Wednesday, April 10, 2013 at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons and staff are permitted to attend. For further information please contact David Maranville at (202) 502–6351 or email *David.Maranville@ferc.gov*.

Dated: March 27, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–07677 Filed 4–2–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13438–002]

Free Flow Power Iowa 1, LLC; Notice of Successive Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 2, 2013, Free Flow Power Iowa 1, LLC (FFP Iowa) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Mississippi Lock and Dam 12 Water Power Project (Mississippi L+D 12 Project or project) to be located at the existing U. S. Army Corps of Engineers (Corps) Mississippi River Lock and Dam No. 12 on the Mississippi River near the City of Bellevue, Jackson County, Iowa. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) A powerhouse located at the east end of the movable section of the dam and containing six horizontal bulb turbines with a total nameplate capacity of 17.06 megawatts; (2) a 69-kilovolt, 4,940-foot-long overhead transmission line connecting the project generation with Alliant Energy transmission facilities; and (3) appurtenant facilities. The majority of the project would be located on lands owned by the United States government and operated by the United States Army Corps of Engineers. The estimated annual generation of the Mississippi L+D 12 Project would be 85.4 gigawatt-hours.

Applicant Contact: Daniel Lissner, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; phone: (978) 252–7111.

FERC Contact: Sergiu Serban: phone: (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13438) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 27, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–07680 Filed 4–2–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9382–4]

Access to Confidential Business Information by Chemical Abstract Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA expects to authorize its contractor, Chemical Abstract Services (CAS) of Columbus, Ohio, to access information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data occurred on or about April 1, 2013.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; email address: *sherlock.scott@epa.gov*.

For general information contact: Colby Lintner, Regulatory Coordinator. Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture,

[1] *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,088 (2009).

process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

It is expected under EPA Contract Number EP–W–13–008, contractor CAS of 2540 Olentangy River Rd., P.O. Box 3012 Columbus, Ohio, to assist the EPA in providing technical assistance in developing and operating the TSCA Chemical Substance Inventory. They will also assist in determining whether the substances described in the submissions received are already found on the TSCA Inventory; and review and/or provide the chemical names for the substances being reviewed. This is a new contract that continues work initiated under Contract Number EP–W–06–011. This is a renewal of a long-existing contract with CAS.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA Contract Number EP–W–13–008, CAS requires access to CBI submitted to EPA under sections 5 and 8 of TSCA to perform successfully the duties specified under the contract. CAS' personnel were given access to information submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA is providing CAS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and CAS' site located at 2540 Olentangy River Rd., Columbus, Ohio, in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until April 30, 2018. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CAS' personnel were required to sign nondisclosure agreements and were briefed on appropriate security procedures before they were permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: March 20, 2013.

Matthew Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2013–07640 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0745; FRL–9797–7]

Proposed Information Collection Request; Comment Request; Reformulated Gasoline Commingling Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Reformulated Gasoline Commingling Provisions" (EPA ICR No.2228.04, OMB Control No. 2060–0587) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a "RENEWAL" of the ICR, which is currently approved through August 31, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 3, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0745 online using *www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center in Washington, DC (EPA/DC). The docket is located in the EPA West Building, 1301 Constitution Avenue NW., Room 3334, and is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding legal holidays, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuels Compliance Center, 6406J Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017 fax number: 202–343–2800; email address: *heard.geanetta@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have

practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA would like to continue collecting notifications from gasoline retailers and wholesale purchaser-consumer related to commingling of ethanol blended and non-ethanol blended reformulated gasoline. The test results will allow EPA to monitor compliance with the Reformulated Gasoline Commingling Provisions. We inform respondents that they may assert claims of business confidentiality (CBI) for information they submit in accordance with 40 CFR Part 2203.

Form Numbers: None.

Respondents/affected entities: Gasoline stations, Gasoline stations with convenience stores, Gasoline stations without convenience stores.

Respondent's obligation to respond: mandatory Sections 114 and 208 of the Clean Air Act (CAA), 42 U.S.C. 7414 and 7542.

Estimated number of respondents: 84,050.

Frequency of response: Annually.

Total estimated burden: 21,013 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $357,221 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: The change in burden from the prior ICR is due in part to better numbers extracted from business and industry economic statistics that assisted in calculating the numbers of respondents. These better numbers reduced the party size by 13,650 members. The number of responses also declined from 110,700 to 84,050 a difference of 26,650 reports which reduced the industry burden hours from 27,675 to 21,013. We also found that the original cost per response was overstated by a factor of 2. With the decline of respondents, burden hours and responses, and revisit cost per response, the cost to renew this ICR is $357,221 a difference of $528,379 calculated from the prior collection approved by OMB.

Dated: March 27, 2013.

Byron Bunker,

Director, Compliance Division.

[FR Doc. 2013–07771 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–1064; FRL–9797–6]

Radiation Protection Guidance for Diagnostic and Interventional X-Ray Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing the availability of, and soliciting public comments for 60 days, on Radiation Protection Guidance for Diagnostic and Interventional X-Ray Procedures. This document is Federal Guidance Report No. 14. It replaces Federal Guidance Report No. 9, "Radiation Protection Guidance for Diagnostic X-rays," which was released in October 1976. The recommendations contained in this report represent consensus judgment of an interagency Medical Work Group for the practice of diagnostic and interventional imaging by Federal agencies.

DATES: Comments must be received on or before June 3, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–1064, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- Email: to *a-and-r-docket@epa.gov*
- Fax: (202) 566–1741
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW, Washington, DC 20460

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2010–1064. The agency's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *www.regulations.gov.* As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Michael Boyd, Radiation Protection Division, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460; telephone number: 202–343–9395; email address: *boyd.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Submitting CBI.* Do not submit CBI information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI

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

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

II. Background

This document is Federal Guidance Report No. 14 (FGR 14), "Radiation Protection Guidance for Diagnostic and Interventional X-ray Procedures." It replaces Federal Guidance Report No. 9, "Radiation Protection Guidance for Diagnostic X-rays," which was released in October 1976. Federal Guidance reports were initiated under the Federal Radiation Council (FRC), which was formed in 1959, through Executive Order 10831. A decade later its functions were transferred to the Administrator of the newly formed Environmental Protection Agency (EPA) as part of Reorganization Plan No. 3 of 1970. Under these authorities it is the responsibility of the Administrator to "advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States." (42 U.S.C. 2021(h)) While EPA believes that this guidance will be useful to the broader medical community, the recommendations in FGR 14 are specifically directed to the use of diagnostic and interventional x-rays in federal facilities. A draft version of FGR 14 is now available for review and comment. It can be found on the agency's Radiation Protection Web site at: *http://www.epa.gov/radiation.*

Dated: March 27, 2013.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2013–07765 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0142; FRL–9382–1]

Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register.**

DATES: The deletions in Table 1 of Unit II., are effective May 3, 2013, because the registrants requested a waiver of the 180-day comment period, unless the Agency receives a written withdrawal request on or before May 3, 2013. The Agency will consider a withdrawal request postmarked no later than May 3, 2013. The deletion in Table 2 of Unit II., is effective September 30, 2013, unless the Agency receives a written withdrawal request on or before September 30, 2013. The Agency will consider a withdrawal request postmarked no later than September 30, 2013.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant in Table 1 of Unit II., before May 3, 2013, for the registrants that requested a waiver of the 180-day comment period. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant in Table 2 of Unit II., before September 30, 2013.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2013–0142, by one of the following methods:

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Christopher Green, 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) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0142, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional

information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 and Table 2 of this unit by registration number, product name, active ingredient, and specific uses deleted.

TABLE 1—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product name	Active ingredient	Delete from label
100–769	Medallion Fungicide	Fludioxonil	Post-harvest uses on Citrus, Kiwi, Pome fruit, Pomegranates, Stone fruit & Yams.
9198–227	The Andersons 3-Way Snow Mold Fungicide.	Chlorothalonil, Pentachloronitrobenzene & Propiconazole.	Golf course roughs, Sod farms, & other Turf grown areas (athletic fields, cemeteries, parks & commercial turf).
11603–52	Agan Imazethapyr Technical.	Imazethapyr	Field corn (Clearfield corn hybrids only) & Clearfield rice.
11678–71	Pyriproxyfen Technical	Pyriproxyfen	Greenhouse non-food, Terrestrial non-food crop, Terrestrial food uses.

Users of these products in Table 1 of this unit, who desire continued use on crops or sites being deleted should contact the applicable registrant before May 3, 2013, because the registrants requested a waiver of the 180-day comment period, to discuss withdrawal of the application for amendment. This 30-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

TABLE 2—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product name	Active ingredient	Delete from label
87284–3	Willowood Propiconazole Technical II.	Propiconazole	Wood preservative uses

Users of this product in Table 2 of this unit who desire continued use on crops or sites being deleted should contact the applicable registrant before September 30, 2013 to discuss withdrawal of the application for amendment. This 180-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 3 of this unit includes the names and addresses of record for all registrants of the products listed in Tables 1 and 2 of this unit, in sequence by EPA company number.

TABLE 3—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA company Number	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300.
9198	The Andersons Lawn Fertilizer Division, Inc., P.O. Box 119, Maumee, OH 43537.
11603	Agan Chemical Manufacturing, Ltd., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
11678	Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
87284	Willowood Propiconazole, LLC, 1600 NW., Garden Valley Blvd., Suite 120, Roseburg, OR 97471.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register.** Thereafter, the EPA Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Christopher Green using the methods in **ADDRESSES.** The Agency will consider written withdrawal requests postmarked no later than May 3, 2013, for the requests that the registrants requested to waive the 180-day comment period and no later than September 30, 2013, for the requests with a 180-day comment period.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 18, 2013.

Oscar Morales,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2013–07644 Filed 4–2–13; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: *Date and Time:* The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 11, 2013, from 1:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance.

The matters to be considered at the meeting are:

Closed Session

- Confidential Report on Farm Credit System Performance

Open Session

A. Approval of Minutes

- January 24, 2013

B. Business Reports

- FCSIC Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Consideration of Policy Statement Concerning Assistance to Troubled Farm Credit System Institutions
- Presentation of 2012 Audit Results by External Auditor Clifton Larson Allen L.L.P.

Executive Session

- Executive Session of the FCSIC Board Audit Committee with the External Auditor

Dated: March 29, 2013.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2013–07759 Filed 4–2–13; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (www.fmc.gov) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 010979–053.

Title: Caribbean Shipowners Association.

Parties: CMA CGM, S.A.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Tropical Shipping and Construction Company Limited; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor, 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add Crowley Caribbean Services LLC as a party to the agreement.

Agreement No.: 012197.

Title: CMA CGM/HLAG U.S.-West Med Vessel Sharing and Slot Exchange Agreement.

Parties: CMA CGM S.A. and Hapag-Lloyd AG..

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes the parties to share vessels and exchange space on their respective services in the trades between the U.S. Atlantic and Gulf Coasts and ports in Italy, France, Spain, Portugal, Malta and Morocco.

Agreement No.: 012198.

Title: CSCL/UASC Vessel Sharing and Slot Exchange Agreement.

Parties: China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party); and United Arab Shipping Company.

Filing Party: Patricia M. O'Neill; Blank & Rome LLP; 600 New Hampshire Ave. NW.; Washington DC, 20037.

Synopsis: The agreement authorizes the parties to share space on vessels in the trade between the West Coasts of the U.S. and Canada on the one hand, and Asia, including China and South Korea on the other hand.

By Order of the Federal Maritime Commission.

Dated: March 29, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–07735 Filed 4–2–13; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

ABC Logistics, Inc. (NVO), 1833 North 105th Street, Suite 306, Seattle, WA 98133. Officers: Mohamed Meselhy, Vice President (QI), Alexander Mednikov, President. Application Type: New NVO License.

Allround Forwarding Co. Inc. (NVO & OFF), 134 West 26th Street, New York, NY 10001. Officers: Hatto H. Dachgruber, President (QI), John Wellock, Vice President. Application Type: License Transfer to Allround Forwarding Holding, Inc.

Alpha Total Solutions Inc. dba T T Logistics (NVO), 18747 S. Laurel Park Road, Rancho Dominguez, CA 90220. Officer: Tino M. Tsai, President (QI). Application Type: New NVO License.

American International Shipping Company (NVO & OFF), 7 Emily Road, Manalapan, NJ 07726. Officers: Sushma Sharma, President (QI). Rajesh Sood, Secretary. Application Type: New NVO & OFF License.

ANC Express Inc. (NVO), 144–29 156th Street, Jamaica, NY 11434. Officer: Sung (a.k.a. Sam) S. Hong, President

(QI). Application Type: New NVO License.

Blue Carrier Line Inc. (NVO & OFF), 19920 Foxwood Forest Blvd., Suite 401, Humble, TX 77338. Officer: Mary (Mickey) McKenna-O'Brien, President (QI). Application Type: License Transfer to Blue Carrier Line Inc. (a Texas Corporation) & add OFF Service.

CAP Worldwide, Inc. (NVO & OFF), 3226 Lodestar Road, Building 7, Suite 200, Houston, TX 77032. Officers: Dennis Hiatt, Treasurer (QI), Rebecca J. Kersting, President. Application Type: QI Change.

CIL Freight Inc. (NVO & OFF), 1990 Lakeside Parkway, Suite 300, Tucker, GA 30084. Officers: Fang (Mizzy) M. Doong, Vice President (QI), Mandi Fang, President. Application Type: QI Change.

Consolcargo USA Inc dba CSC Consolidators (NVO & OFF), 8201 NW 56th Street, Miami, FL 33166. Officers: Rocio D. Gamboa, Secretary (QI), Carlos A. Sanchez, Managing Member. Application Type: License Transfer to Overseas Group USA, LLC dba CSC Consol, USA & Add OFF Service.

Contrans Cargo Inc. (NVO), 831 S. Lemon Avenue, Unit A11F, Walnut, CA 91789. Officers: Philip Fut Chung Yuen (a.k.a. Philip) Yuen, COO (QI), Xiaojun Wang, President. Application Type: QI Change.

East-West Logistics, Inc. (NVO), 14821 Northam Street, La Mirada, CA 90638. Officers: Cheng Lu, CFO (QI), Sherry Wang, President, Application Type: QI Change.

Equinox Global Forwarding LLC (OFF), 1620 Vauxhall Road, Suite 323, Union, NJ 07083. Officers: Xavier Vanoni, Managing Member (QI), Kathryn Vanoni, Member. Application Type: New OFF.

Global Partner Alliance, Inc. (NVO), 989 Aec Drive, Wood Dale, IL 60191. Officer: Jakub Ligeza, President (QI). Application Type: LicenseTransfer to Tripadam Logistics, Inc.

KJW–CHB, LLC (OFF), 765 North Route 83, Suite 114, Bensenville, IL 60106. Officer: Keh J. Wu, President (QI). Application Type: Add Trade Name, KCW-Logistics.

Majestic Superior Logistics Inc (NVO), 3100 S 176th Street, Suite 100, Seatac, WA 98188. Officers: Martin Hung Ching Su, Vice President (QI), Choo Lim NG, President. Application Type: New NVO License.

Nippon Concept America, LLC (OFF), 2203 Timberloch Place, Suite 218D, The Woodlands, TX 77380. Officers: John R. Johnson, Special Manager (QI), Bertus Penters, Manager. Application Type: QI Change.

OceanMax Logistics LLC (OFF), 3566 Old Chamblee Tucker Road, #6, Atlanta, GA 30340. Officers: Dhaval Virpariya, Chief Executive Manager (QI), Kajal Changela, Member, Application Type: New OFF License.

Radiant Overseas Express, Inc. (NVO), 2705 S. Diamond Bar Blvd., Suite 200, Diamond Bar, CA 91765. Officer: Chih Hua (a.k.a. Elton) Chang, CEO (QI). Application Type: QI Change.

Safe Transport LLC (NVO & OFF), 533 Del Monte Avenue, South San Francisco, CA 94080. Officers: Raul B. Garcia, Member (QI), Blesilda O. Garica, Member. Application Type: New NVO & OFF License.

South Cargo LLC (NVO & OFF), 6708 NW 82th Avenue, Miami, FL 33166. Officers: Ana O. Guerrero, Manager (QI), Jesus Aznar, Managing Member. Application Type: New NVO & OFF License.

The Relocation Freight Corporation of America (OFF), Two Corporate Drive, Suite 440, Shelton, CT 06484. Officers: Susan Dumire, Assistant Vice President (QI), Richard Schwartz, President, Application Type: QI Change.

By the Commission.

Dated: March 29, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–07728 Filed 4–2–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 7763N.
Name: Falcon Express Lines, Inc.
Address: 159–11 Rockaway Blvd., Jamaica, NY 11434.
Date Revoked: February 27 2013.
Reason: Voluntary Surrender of License.

License No.: 8927N.
Name: Grand Express International, Inc.
Address: 135 Mimosa Drive, Roslyn, NY 11576.
Date Revoked: February 28, 2013.
Reason: Failed to maintain a valid bond.

License No.: 016816F.
Name: Green Integrated Logistics, Inc.
Address: 16210 South Maple Avenue, Gardena, CA 90248.
Date Revoked: March 14, 2013.
Reason: Failed to maintain a valid bond.

License No.: 017054NF.
Name: Asian Logistics, Inc.
Address: 2079 South Atlantic Blvd., Suite D, Monterey Park, CA 91754.
Date Revoked: March 1, 2013.
Reason: Failed to maintain valid bonds.

License No.: 017436N.
Name: Scorpion Express Line Corp.
Address: 4995 NW 72nd Avenue, Suite 209, Miami, FL 33122.
Date Revoked: March 14, 2013.
Reason: Failed to maintain a valid bond.

License No.: 17743N.
Name: Worldtrans Co. dba Worldtrans Container Line.
Address: 115 N. Main Street, Suite 200, Algonquin, IL 60102.
Date Revoked: March 15, 2013.
Reason: Failed to maintain a valid bond.

License No.: 18180N.
Name: World Connection Express, Inc.
Address: 3055 Sullivan Avenue, Rosemead, CA 91770.
Date Revoked: March 2, 2013.
Reason: Failed to maintain a valid bond.

License No.: 019778F.
Name: FT Worldwide, LLC.
Address: 2979 Rushland Road, Jamison, PA 18929.
Date Revoked: March 7, 2013.
Reason: Failed to maintain a valid bond.

License No.: 020715N.
Name: HI Trading International Corp. dba HI Transport International dba Shine International Transportation (LA).
Address: 12831 Weber Way, Hawthorne, CA 90250.
Dates Revoked: March 15, 2013
Reason: Failed to maintain a valid bond.

License No.: 020743NF.
Name: Sil, LLC. dba Air Ocean Cargo USA, LLC. dba Superior International Logistics.
Address: 4471 NW 36th Street, Miami Springs, FL 33166.
Date Revoked: February 28, 2013.
Reason: Failed to maintain valid bonds.

License No.: 022799N.
Name: Atlantic Cargo Logistics LLC.
Address: 127 East New York Avenue, Suite 1, Deland, FL 32720.
Date Revoked: March 14, 2013.
Reason: Failed to maintain a valid bond.

License No.: 023056NF.
Name: RDD Freight International (Atlanta), Inc.
Address: 7094 Peachtree Industrial Blvd., Suite 188, Norcross, GA 30071.
Date Revoked: March 14, 2013.
Reason: Failed to maintain valid bonds.

License No.: 023129N.
Name: F.L. Investment Group, Inc. dba Quivas Cargo Express.
Address: 4101 Alverado Street, Orlando. FL 32812.
Date Revoked: March 15, 2013.
Reason: Failed to maintain a valid bond.

License No.: 023294NF.
Name: DTS Advance LLC dba Triple Eagle Logistics Canada.
Address: 38850 Taylor Parkway, North Ridgeville, OH 44039.
Date Revoked: February 28, 2013.
Reason: Failed to maintain valid bonds.

License No.: 023362NF.
Name: Ameritrans Freight International (USA), LLC.
Address: 13723 Harvest Glen Way, Germantown, MD 20874.
Date Revoked: February 27, 2013.
Reason: Failed to maintain valid bonds.

License No.: 024001F.
Name: BM Forwarding Inc.
Address: 1290 Maple View Drive, Pomona, CA 91766.
Date Revoked: March 13, 2013.
Reason: Voluntary Surrender of License.

Vern W. Hill,
Director, Bureau of Certification and Licensing.

[FR Doc. 2013–07734 Filed 4–2–13; 8:45 am]
BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-CIB–2013–02; Docket 2013–0002; Seq 7]

Privacy Act of 1974; Notice of Revised System of Records

AGENCY: General Services Administration.

ACTION: Notice of a revised Privacy Act system of records.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. This notice is an updated Privacy Act system of records notice.

DATES: Effective May 3, 2013.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Privacy Act Officer: telephone 202–208–1317; email *gsa.privacyact@gsa.gov*.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1275 First Street NE., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA reviewed this Privacy Act system of records notice to ensure that it is relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and is in compliance with the Secure Flight Program and Office of Foreign Assets Control laws and regulations. Additional authorities have been included in this update to cover the Department of Treasury, Office of Foreign Assets Control, laws and regulations.

Dated: March 28, 2013.

James Atwater,
Acting Director, Office of Information Management.

GSA/GOVT–3

SYSTEM NAME:

Travel Charge Card Program.

SYSTEM LOCATION:

This system of records is located in the finance office of the local installation of the Federal agency for which an individual has traveled. Records necessary for a contractor to perform under a contract are located at the contractor's facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current Federal employees who apply for and/or use Government-assigned travel charge cards and all other Federal employees and authorized individuals who use a Federal account number for travel purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, home address, Social Security Number, date of birth, employment information, telephone numbers, citizenship/residency, information needed for identification verification, travel authorizations and vouchers, charge card applications, charge card receipts, terms and conditions for use of charge cards, and monthly reports from contractor(s) showing charges to individual account numbers, balances, and other types of account analyses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5707 and as implemented by the Federal Travel Regulation, 41 CFR 300–304; E.O. 9397, as amended; E.O. 11609, as amended; Public Law 107–56 Sec. 326; Public Law 109–115 Sec. 846; Laws administered by the Department of Treasury, under the Office of Foreign Assets Control (OFAC) *Regulations for the Financial Community*, dated Jan. 24, 2012 (50 U.S.C. App. §§§§ 1–44, 18 U.S.C. 3571, 50 U.S.C. 1701–06, 18 U.S.C. 3571, Public Law 101–513, 104 Stat. 2047–55, 22 U.S.C. 287c, 22 U.S.C. 2349 aa-9, 22 U.S.C. 6001–10, 22, U.S.C. 6021–91, 8 U.S.C., 219, 18 U.S.C. 2332d and 18 U.S.C. 2339b, Public Law 106–120,tit. VIII, 113 Stat 1606, 1626–1636 (1999) (to be codified at 21 U.S.C. 1901–1908, 18 U.S.C. 1001).

PURPOSE:

To assemble in one system information to provide government agencies with: (1) Information on Federal employees, contractors, and other individuals who apply for and/or use Government-assigned travel charge cards, including the requirement for banks to collect certain information in compliance with the OFAC regulations; (2) Necessary information on the commercial travel and transportation payment and expense control system, which provides travelers charge cards and the agency an account number for official travel and related travel expenses on a worldwide basis; (3) attendant operational and control support; and (4) management information reports for expense control purposes.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

a. To another Federal agency, Travel Management Center (TMC), online booking engine suppliers and the airlines that are required to support the Department of Homeland Security/Transportation Security Administration (DHS/TSA) Secure Flight Program. In this program, DHS/TSA assumes the function of conducting pre-flight comparisons of airline passenger information to Federal Government watch lists. In order to supply the appropriate information, these mentioned parties are responsible for obtaining new data fields consisting of personal information for date of birth, gender, known traveler number and redress number. At this time, the redress number and known traveler number are optional but may be required to be stored in another phase of the Secure Flight program.

b. To disclose information to a Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, implementing,

or carrying out a statute, rule, regulation, or order, where an agency becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry made at the request of the individual who is the subject of the record.

d. To disclose information to the contractor in providing necessary information, including information collected for compliance with Office of Foreign Assets Control regulations, for issuing credit cards.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

f. To disclose information to officials of labor organizations recognized under Public Law 95–454, when necessary to their duties of exclusive representation on personnel policies, practices, and matters affecting working conditions.

g. To disclose information to a Federal agency for accumulating reporting data and monitoring the system.

h. To disclose information in the form of listings, reports, and records of all common carrier transactions including refunds and adjustments to an agency by the contractor to enable audits of carrier charges to the Federal government.

i. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

j. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

k. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

l. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

m. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Paper records are stored in file folders. Electronic records are stored within a computer and associated equipment.

RETRIEVABILITY:

Records are filed and retrieved by name, Social Security Number, and/or credit card number.

SAFEGUARDS:

Paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by passwords, access codes, and entry logs. There is restricted access to credit card account numbers, and information is released only to authorized users and officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are kept for 3 years and then destroyed, as required by the General Records Retention Schedules issued by the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Travel, Motor Vehicle, and Card Services (QM), Federal Acquisition Service, General Services Administration, Crystal Plaza 4, 2200 Crystal Drive, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Inquiries by individuals should be addressed to the Finance Officer of the agency for which they traveled.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Finance Officer of the agency for which they traveled. Individuals must furnish their full name and the authorizing agency and its component to facilitate the location and identification of their records.

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the Finance Officer of the agency for which they traveled. Individuals must furnish their full name and the authorizing agency and component for which they traveled.

RECORD SOURCE CATEGORIES:

Charge card applications, monthly reports from the contractor, travel authorizations and vouchers, credit card companies, and data interchanged between agencies.

[FR Doc. 2013–07669 Filed 4–2–13; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-13–12QI]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Voluntary Environmental Assessment Information System (NVEAIS)—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting a three-year OMB approval for a National Voluntary Environmental Assessment Information System (NVEAIS) to collect data from foodborne illness outbreak environmental assessments routinely conducted by local, state, territorial, or tribal food safety programs during outbreak investigations. Environmental assessment data are not currently collected at the national level. The data reported through this information system will provide timely data on the causes of outbreaks, including environmental factors associated with outbreaks, and are essential to

environmental public health regulators' efforts to respond more effectively to outbreaks and prevent future, similar outbreaks.

The information system was developed by the Environmental Health Specialists Network (EHS-Net), a collaborative project of federal and state public health agencies. The EHS-Net has developed a standardized instrument for reporting data relevant to foodborne illness outbreak environmental assessments.

State, local, tribal, and territorial food safety programs are the primary respondents for this data collection. Although it is not possible to determine how many programs will choose to participate, as NVEAIS is voluntary, the maximum potential number of program respondents is approximately 3,000.

These programs will be reporting data on outbreaks and factors related to outbreaks, not their programs or personnel. It is not possible to determine exactly how many outbreaks will occur in the future, nor where they will occur. However, we estimate, based on existing data, that a maximum of 1,400 foodborne illness outbreaks will occur annually. Only programs in the jurisdictions in which these outbreaks occur would report to NVEAIS. Assuming each outbreak occurs in a different jurisdiction, there will be one respondent per outbreak.

There are two data collection activities. The first is entering all requested environmental assessment data into NVEAIS. This will be done once for each outbreak by food safety program personnel. This will take approximately 60 minutes per outbreak.

The second data collection activity is the manager interview that will be conducted at each establishment associated with an outbreak by the state food safety programs. Most outbreaks are associated with only one establishment; however, some are associated with multiple establishments. We estimate that a maximum average of 4 manager interviews will be conducted per outbreak. Each interview will take about 20 minutes.

Additionally, all food safety program personnel participating in NVEAIS will be required to attend a LiveMeeting (i.e., webinar) training session conducted by CDC staff. We estimate the burden of this training to be a maximum of 2 hours. Respondents will only have to take this training one time. Assuming a maximum number of outbreaks of 1,400, the estimated burden for this training is 2,800 hours.

The total estimated annual burden is 6,067 hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hrs)
Food safety program personnel	NVEAIS Data Reporting Instrument	1,400	1	1
Retail food personnel	NVEAIS Manager interview	5,600	1	20/60
Food safety program personnel	NVEAIS Food safety program personnel training.	1,400	1	2

Dated: March 20, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–07736 Filed 4–2–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–12OG]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Science to Practice: Developing and Testing a Marketing Strategy for Preventing Alcohol-related Problems in College Communities—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year, 1,700 college students die and more than 1.4 million are injured as a result of alcohol-related incidents. Additionally, about 25% of students report negative academic consequences due to alcohol. Despite the enormous public health burden of college-age alcohol misuse, there have been few rigorous evaluations of environmental strategies to address alcohol misuse in college settings. Environmental strategies typically involve implementing and enforcing policies that change the environments that influence alcohol-related behavior and subsequent harm. Further, studies show that the typical lag time between identifying effective interventions and obtaining widespread adoption can stretch to well over a decade. Given the number of students harmed, there is an urgent need to develop more efficient and timely strategies for moving effective science to widespread practice. This project will address this exact issue by systematically developing a marketing strategy for The Safer Campuses and Communities intervention, a comprehensive, community-based environmental prevention program with proven efficacy in reducing intoxication and alcohol-impaired driving among college students.

The CDC proposes an on-line information collection, which will take place during the spring and fall semester of the 2012–2013 academic years, and will constitute a marketing strategy targeting a national sample of 4-year colleges and universities. The Institutional Data Archive (IDA) on American Higher Education is a dataset consolidated by researchers at the University of California, Riverside for the Colleges & Universities 2000 Project. The dataset includes: earned degrees,

enrollments, finances, faculty salaries, technology transfer activities, and institutional rankings over a 40-year period, 1970–2011. IDA also includes census information concerning neighborhoods surrounding colleges and universities.

160 Institutes of Higher Education (IHE) will be sampled from the IDA in order to collect information from key informants and key leaders from the surrounding community. Information gathered from these respondents will be used to: (1) Develop and revise customized marketing and program materials targeting potential campus and community stakeholders; and (2) inform strategies for the marketing plan, which aims to facilitate adoption of the Safer Campuses and Communities intervention by IHEs.

The online survey will be completed by: College Administrators and staff, campus and municipal police; as well as selected community leaders. The IHEs will be contacted via email, with a maximum of 12 participants per IHE for a total of 1800 respondents. All respondent information will be maintained in a secure, electronic format accessible to a limited number of project staff. The amount of time required for a respondent to complete the survey is estimated to be 1 hour.

There are no costs to respondents other than their time. The total estimated annual burden hours are 1,800.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
College Administrator	CDC Questionnaire (Attachment C)	600	1	1
Police officer	CDC Questionnaire (Attachment C)	600	1	1
Community Leader	CDC Questionnaire (Attachment C)	600	1	1

Dated: March 28, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–07739 Filed 4–2–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–13–13PV]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

"Study to Explore Distribution, Reach, and Influence of Educational Children's Book *Amazing Me. It's Busy Being 3!* in Pediatric Office Settings"—NEW—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Developmental disabilities have reached epidemic proportions in the U.S., with approximately 17 percent of children experiencing developmental delays. Impairment in physical, learning, language, or behavior areas can have a lifetime impact on everyday activities of life for a child and into adulthood. Research has shown that parents can be reliable sources of information about their children's development. Several studies have found that parents' concerns about their children's development are generally valid and predictive of developmental delays. These studies suggest that efforts to raise parental awareness of developmental milestones can increase the likelihood that children with developmental disabilities are identified early and connected with appropriate services and support.

Using a children's picture book format, CDC developed *Amazing Me: It's Busy Being 3!* to increase awareness of developmental milestones among parents of 3-year-olds and actively engage them in the monitoring of their child's development. CDC partnered with Lysol and Reach Out and Read (ROR), a non-profit organization that promotes early literacy among low-income families by distributing books in pediatric exam rooms, to disseminate copies of *Amazing Me* to parents. In spring 2012, 250 of ROR's largest pediatric clinics each received 300 copies of *Amazing Me* for distribution to parents of 3-year-old children during well-child visits. Distribution of *Amazing Me* through ROR practices was used as a vehicle to reach those at higher risk for developmental delays and disabilities: children insured by Medicaid and children from families with low incomes.

Preliminary data gathered from a web survey of ROR clinical staff indicates that clinical staff are not only receptive to but supportive of the *Amazing Me* book. However, the web survey of ROR clinical staff does not provide information from the book's target audience—parents. If CDC wishes to expand book distribution beyond ROR clinical settings, it will be important to gather data on parents' experiences receiving the *Amazing Me* book as part of a pediatric visit, and what kind of influence, if any, the book has had on their knowledge, attitudes, and beliefs about developmental milestones.

To this end, CDC will identify and recruit 3 ROR pediatric practices and 3 non-ROR practices in the greater Atlanta, Georgia and greater Washington, DC areas to distribute copies of *Amazing Me* to parents/guardians of 3-year-olds, soon to be 3-year-olds, or recently turned 4-year-olds attending the selected practices. The study will gather feedback from parents/guardians about (1) their experiences receiving the book as part of a pediatric visit, and (2) the influence of the book on their awareness, attitudes, and self-efficacy regarding monitoring developmental milestones. Data will be gathered through a web survey of 900 parents/guardians who have received a copy of the *Amazing Me* book from participating ROR and non-ROR practices. Parents/guardians will access the web survey by logging onto a URL address provided on a sticker affixed to the inside cover of each *Amazing Me* book. We estimate that we will screen 900 parents/guardians in order to recruit 900 respondents for the web survey.

CDC will also conduct six follow-up focus groups with survey respondents to gather more in-depth information from parents about their experiences reading the *Amazing Me* book at home with their children and assessing their child's development using the book. We estimate that we will screen 60 parents/guardians to recruit 54 participants for the focus groups. These six focus groups will be conducted in greater Atlanta, Georgia and greater Washington, DC.

Findings from the parent web survey and focus groups will help CDC to determine if a children's book is an effective channel for reaching parents, whether more books like *Amazing Me* for other age groups should be developed, and if the ROR book distribution model is an effective means to reach low-income and at-risk families.

This request is submitted to obtain Office of Management and Budget (OMB) clearance for two years. The estimated annualized burden hours for this data collection activity are 139. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Web Survey					
Parents/Guardians	Web Screener and Survey	900	1	4/60	60
Parents/Guardians	Follow-up Contact Survey	900	1	1/60	15
Focus Groups					
Parents/Guardians	Screener	60	1	5/60	5
Parents/Guardians	Informed Consent	54	1	5/60	5
Parents/Guardians	Focus Group Moderator's Guide	54	1	1	54
Total					139

Dated: March 28, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–07744 Filed 4–2–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–0924]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Survey of Rapid Influenza Diagnostic Test (RIDT) Practices in Clinical Laboratories and Evaluation of Laboratory Course—Reinstatement (OMB Control No. 0920–0924) with change—the Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this request is to obtain Office of Budget and Management (OMB) approval to reinstate with change, the data collection for the Survey of Rapid Influenza Diagnostic Test (RIDT) Practices in Clinical Laboratories (OMB Control No. 0920–0924). OMB approval for the 2012 RIDT project expired February 28, 2012. CDC seeks a three-year approval to conduct the RIDT project. Changes incorporated into this reinstatement request include changing the name of the collection to "Survey of Rapid Influenza Diagnostic Test (RIDT) Practices in Clinical Laboratories and Evaluation of Laboratory Course" and adding a question about whether or not the participants have taken the free CDC rapid influenza testing course, Strategies for Improving Rapid Influenza Testing

in Ambulatory Settings, and to rate the usefulness of the course in their clinical setting. The Survey of Rapid Influenza Diagnostic Testing Practices-in Clinical Laboratories and Evaluation of Laboratory Course is a national systematic study investigating rapid influenza diagnostic testing practices in clinical laboratories. The survey will be funded in full by the Office of Surveillance, Epidemiology, and Laboratory Services of the Centers for Disease Control and Prevention.

Influenza epidemics usually cause an average more than 200,000 hospitalizations and 36,000 deaths per year in the U.S. Respiratory illnesses caused by influenza viruses are not easily differentiated from other respiratory infections based solely on symptoms. Also influenza viruses may adversely affect different subpopulations.

The effective use of rapid influenza diagnostic testing practices is an important component of the differential diagnosis of influenza-like-illness in both inpatient and outpatient treatment facilities. Test results are used for making decisions about antiviral versus antibiotic use, and in making admission or discharge decisions. In many cases, rapid influenza tests are the only tests that can provide results while the patient is still present in the facility. Thus, the appropriate use of the tests, and interpretation of test results is critical to the treatment and control of influenza. More than a dozen rapid tests have been approved by the U.S. Food and Drug Administration and are in widespread use. The reliability of rapid influenza tests is influenced by the individual test product used and the setting. Reported sensitivities range from 10–75%; while the median specificities reported are 90–95%. Other factors influencing accuracy are the stage (or duration) of illness when the diagnostic specimen is collected, type and adequacy of the specimen collected, variability in user technique for specimen collection or assay performance, and disease activity in the community. Given these and other collective findings, it is imperative for public health and for response planning that CDC develops sector-specific guidance and effective outreach to the clinicians on appropriate use of RIDT in their practices.

Previous studies by CDC of outpatient facilities showed that clinical laboratories usually perform the rapid tests for emergency departments, and provide results for both inpatient and outpatient treatment. Thus, understanding the use of rapid influenza testing in clinical laboratories in both hospitals and outpatient settings, how the results are reported to emergency departments, treatment facilities and health departments, and what quality assurance practices are used will guide future efforts of the CDC to continue to develop and update appropriate influenza testing guidelines and sector-specific training materials for clinicians and improve health outcomes of the American public. In fact, CDC has developed a rapid testing course, "Strategies for Improving Rapid Influenza Diagnostic Testing", with continuing education credits that is available to clinicians and laboratorians free of charge. We would like to ask respondents to the survey if they have taken the course, and ask them to rate its usefulness.

The survey covers basic laboratory demographic characteristics, specimen collection and processing, testing practices, reporting of results to emergency departments and other treatment facilities, reporting results to health departments, quality assurance practices, and methods of receiving updated influenza-related information. The respondents would be clinical laboratory supervisors, nurses, and other clinicians. The majority of the questions request information about laboratory influenza testing practices. For this request, we have also added a question about whether or not the participants have taken the free CDC rapid influenza testing course and to rate its usefulness in their clinical setting.

No updated systematic study has been conducted to investigate how laboratories now use these tests, how they report results, or how they interact with outpatient treatment facilities, whether they have taken the free rapid influenza testing course, or how they rate the course. The survey will be conducted on a national sample of laboratories and clinical facilities, including those in outpatient facilities that perform rapid influenza diagnostic tests. There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Clinical Laboratory Supervisors	Survey of Rapid Influenza Diagnostic Test Practices in Clinical Laboratories.	600	1	30/60	300
Nurses	Survey of Rapid Influenza Diagnostic Test Practices in Clinical Laboratories.	600	1	30/60	300
Other Clinicians	Survey of Rapid Influenza Diagnostic Test Practices in Clinical Laboratories.	600	1	30/60	300
Total					900

Dated: March 28, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–07742 Filed 4–2–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–13PQ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

DELTA FOCUS Program Evaluation—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Intimate Partner Violence (IPV) is a serious, preventable public health problem that affects millions of Americans and results in serious consequences for victims, families, and communities. IPV occurs between two people in a close relationship. The term "intimate partner" describes physical, sexual, or psychological harm by a current or former partner or spouse. IPV can impact health in many ways, including long-term health problems, emotional impacts, and links to negative health behaviors. IPV exists along a continuum from a single episode of violence to ongoing battering; many victims do not report IPV to police, friends, or family.

Primary prevention means stopping IPV before it occurs. In 2002, authorized by the Family Violence Prevention Services Act (FVPSA), CDC developed the Domestic Violence Prevention Enhancements and Leadership Through Alliances (DELTA) Program, with a focus on the primary prevention of IPV. Since that time, The DELTA Program has funded state domestic violence coalitions (SDVCs) to engage in statewide primary prevention efforts and to provide training, technical assistance, and financial support to local communities for local primary prevention efforts. DELTA FOCUS (Domestic Violence Prevention Enhancement and Leadership through Alliances, Focusing on Outcomes for Communities United with States) builds on that history by providing focused funding to states and communities for intensive implementation and evaluation of IPV primary prevention strategies that address the structural determinants of health at the societal and community levels of the social-ecological model (SEM).

The purpose of the DELTA FOCUS program is to promote the prevention of IPV through the implementation and evaluation of strategies that create a foundation for the development of practice-based evidence. By emphasizing primary prevention, this program will support comprehensive and coordinated approaches to IPV prevention. Each SDVC is required to identify and fund one to two well-organized, broad-based, active local coalitions (referred to as coordinated community responses or CCRs) that are already engaging in, or are at capacity to engage in, IPV primary prevention strategies affecting the structural determinants of health at the societal and/or community levels of the SEM. SDVCs must facilitate and support local-level implementation and hire empowerment evaluators to support the evaluation of IPV prevention strategies by the CCRs. SDVCs must also implement and with their empowerment evaluators, evaluate state-level IPV prevention strategies.

CDC seeks OMB approval to collect information electronically from awardees, their CCRs and their empowerment evaluators. Information will be collected using the DELTA FOCUS Program Evaluation Survey (referred to as DF Survey). The DF survey will collect information about SDVCs satisfaction with CDC efforts to support them; process, program and strategy implementation factors that affect their ability to meet the requirements of the Funding Opportunity Announcement (FOA); prevention knowledge and use of the public health approach; and sustainability of prevention activities and successes.

Information collected through the DF Survey will be used to guide program improvements by CDC in the national DELTA FOCUS program implementation and program improvements by SDVCs in implementation of the program within their state. Specifically the data collection will allow the federal government to assess: a) opportunities and barriers to implementing the DELTA FOCUS program at the state and local levels, b) benefits and challenges of focusing on prevention strategies at the societal and community levels, and c) what data informed program improvements are needed. Not collecting this data could result in inappropriate implementation at the national, state, and local levels. Thus, this data collection is an essential program evaluation activity.

The DF Survey will be completed by 10 SDVC executive directors, 10 SDVC project coordinators, 19 CCR project coordinators, and 10 SDVC empowerment evaluators and take a maximum of 1 hour to complete. We expect for each SDVC there will be four web-based surveys completed in the first year (2013) of awardee activity. CDC will analyze, interpret, translate, and disseminate the survey findings in years two and three of the information collection request. The total estimated annualized burden for the proposed 10 awardees is 44 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TO RESPONDENTS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Domestic Violence Coalition Executive Director.	DELTA FOCUS Survey	10	1	1	10
State Domestic Violence Coalition Project Coordinator.	DELTA FOCUS Survey	10	1	1	10
Coordinated Community Response Project Coordinator.	DELTA FOCUS Survey	19	1	1	19
State Domestic Violence Coalition Empowerment Evaluator.	DELTA FOCUS Survey	10	1	.50	5
Total	.....	.....	.....	.....	44

Dated: March 28, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–07741 Filed 4–2–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1203]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request: Information To Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 3, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0661. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Information To Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements (Formerly: Humanitarian Device Exemption Holders, Institutional Review Boards, Clinical Investigators and FDA Staff Humanitarian Device Exemption Regulation: Questions and Answers)—(OMB Control Number 0910–0661)—Revision

Under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(m)), FDA is authorized to exempt a humanitarian use device (HUD) from the effectiveness requirements in sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnose the disease or condition; (3) the device will not expose patients to an unreasonable or significant risk of illness or injury; and (4) the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

HUDs approved under an HDE cannot be sold for an amount that exceeds the costs of research and development, fabrication, and distribution of the device (i.e., for profit), except in narrow circumstances. Section 613 of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), signed into law on July 9, 2012, amended section 520(m) of the FD&C Act. Under section 520(m)(6)(A)(i) of the FD&C Act, as amended by FDASIA, a HUD approved under an HDE is eligible to be sold for profit if the device meets the following criteria:

- The device is intended for the treatment or diagnosis of a disease or condition that occurs in pediatric patients or in a pediatric subpopulation, and such device is labeled for use in pediatric patients or in a pediatric subpopulation in which the disease or condition occurs; or
- the device is intended for the treatment or diagnosis of a disease or condition that does not occur in pediatric patients or that occurs in pediatric patients in such numbers that the development of the device for such patients is impossible, highly impracticable, or unsafe.

Section 520(m)(6)(A)(ii) of the FD&C Act, as amended by FDASIA, provides that the Secretary of Health and Human Services (the Secretary) will assign an ADN for devices that meet the eligibility criteria to be permitted to be sold for profit. The ADN is defined as the number of devices "reasonably needed to treat, diagnose, or cure a population of 4,000 individuals in the United States," and therefore shall be based on the following information in a HDE application: The number of devices reasonably necessary to treat such individuals.

Section 520(m)(6)(A)(iii) of the FD&C Act (*http://www.fda.gov/*

RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/FDCActChapterVDrugsandDevices/default.htm) provides that an HDE holder immediately notify the Agency if the number of devices distributed during any calendar year exceeds the ADN. Section 520(m)(6)(C) of the FD&C Act provides that an HDE holder may petition to modify the ADN if additional information arises.

On August 5, 2008, FDA issued a guidance entitled "Guidance for HDE Holders, Institutional Review Boards (IRBs), Clinical Investigators, and Food and Drug Administration Staff—Humanitarian Device Exemption (HDE) Regulation: Questions and Answers" (*http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm110203.pdf*). The guidance was developed and issued prior to the enactment of FDASIA, and certain sections of this guidance may no longer be current as a result of FDASIA. The Center for Devices and Radiological Health and the Center for Biologics Evaluation and Research are currently working on a draft HDE guidance, that when finalized, will represent the FDA's current thinking on this topic.

FDA is requesting OMB approval for the collection of information required under the statutory mandate of sections 515A (21 U.S.C. 360e-1) and 520(m) of the FD&C Act as amended.

In the **Federal Register** of December 17, 2012 (77 FR 74667), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/section of FD&C Act (as amended) or FDASIA	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pediatric Subpopulation and Patient Information—515A(a)(2) of the FD&C Act	6	1	6	100	600
Exemption from Profit Prohibition Information—520(m)(6)(A)(i) and (ii) of the FD&C Act	3	1	3	50	150
Request for Determination of Eligibility Criteria—613(b) of FDASIA	2	1	2	10	20
ADN Notification—520(m)(6)(A)(iii) of the FD&C Act	1	1	1	100	100
ADN Modification—520(m)(6)(C) of the FD&C Act	5	1	5	100	500
Total					1,370

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of original HDE applications received in the period between October 1, 2008, and September 30, 2011. During that time, FDA's Center for Devices and Radiological Health received 19 original HDE applications, or about 6 per year. FDA estimates that for each year we will receive six HDE applications and that three of these applications will be indicated for pediatric use. The request for determination of eligibility criteria is new under section 613(b) of FDASIA. We estimate that we will receive approximately two such requests per year. Historically, no companies have exceeded the ADN; and under FDASIA the ADN has expanded to a minimum of 4,000. Therefore, FDA estimates that very few or no HDE holders will notify the Agency that the number of devices distributed in the year has exceeded the ADN. FDA estimates that five HDE holders will petition to have the ADN modified due to additional information on the number of individuals affected by the disease or condition.

The draft guidance refers also to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A, B, and C, have been approved under OMB control number 0910–0231; the collection of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; and the collection of information requirements in 21 CFR 10.30 have been approved under OMB control number 0910–0183.

Dated: March 29, 2013.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2013–07696 Filed 4–2–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0362]

Draft Guidance for Industry and Food and Drug Administration Staff; Glass Syringes for Delivering Drug and Biological Products: Technical Information To Supplement International Organization for Standardization Standard 11040–4; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft guidance for industry and FDA staff entitled "Glass Syringes for Delivering Drug and Biological Products: Technical Information to Supplement International Organization for Standardization (ISO) Standard 11040–4." These supplemental data are necessary for FDA to ensure the safe and effective use of glass syringes that comply with the ISO 11040–4 standard when connected to devices ("connecting devices") that comply with the ISO 594–2 standard.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 2, 2013.

ADDRESSES: Submit written requests for single printed copies of the draft guidance to the Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5129; Silver Spring, MD 20993. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the Office of Combination Products at 301–796–8930. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the 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: Patricia Y. Love, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5129, Silver Spring, MD 20993.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Glass Syringes for Delivering Drug and Biological Products: Technical Information to Supplement International Organization for Standardization (ISO) Standard 11040–4." This document provides guidance to sponsors seeking to rely on conformity to ISO Standard 11040–4 in submissions for glass syringes products. FDA has become aware of adverse events and product quality events related to connectivity problems when certain glass syringes are used with connecting devices, including connecting devices to conform to the FDA-recognized ISO 594–2 standard. Accordingly, FDA has determined that, for glass syringes, demonstrating conformity to the ISO 11040–4 standard alone does not ensure that the glass syringe can be properly connected to connecting devices. Therefore, this guidance document identifies additional, technical information that should be included in an investigational device exemption (IDE), humanitarian device exemption (HDE), 510(k), or postmarket application (PMA) for a glass syringe product, or in an investigational new drug application (IND), a biologics license application (BLA), new drug application (NDA), or abbreviated new drug application (ANDA) for a drug or biological product that is delivered with such a glass syringe product, to demonstrate that the glass syringe can be properly connected to connecting devices.

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 "Glass Syringes for Delivering Drug and Biological Products: Technical Information to Supplement International Organization for Standardization (ISO) Standard 11040–4." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 314 for NDAs have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 for BLAs have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 814 subpart B for PMAs have been approved under OMB control number 0910–0231. The collections of information in FD&C Act subpart E for 510(k) notifications have been approved under OMB control number 0901–0120.

Dated: March 28, 2013.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2013–07685 Filed 4–2–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Primary Care Faculty Development Initiative (OMB No. 0915-xxxx)—[New].

Abstract: HRSA's Bureau of Health Professions, Division of Medicine and Dentistry, has contracted with Oregon Health and Science University (OHSU), contract HHSH250201200023C, to conduct the planning, execution, and evaluation of a nationally based, longitudinal Primary Care Faculty Development Initiative (PCFDI) demonstration project. OHSU has developed web-based survey

instruments which will be used to evaluate the effectiveness of the planned curriculum and its implementation and to make recommendations to improve teaching and competency assessment in primary care educational activities. The two web-based surveys are Irvine's Leadership Behavior Survey and the Faculty Skill & Program Feasibility Survey. The objectives of the survey instruments are to: assess the feasibility and acceptability of an inter-disciplinary faculty development pilot program targeting primary care physicians; to measure the leadership skills of PCFDI faculty participants; and to assess the initial impact of faculty receiving training from an inter-disciplinary faculty development pilot program on their perception of skill development in the core content areas of leadership, change management, teamwork, panel or population management, competency assessment, and clinical microsystems.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Irvine's Leadership Behavior Survey	36	1	36	.167	6.01
Faculty Skill & Program Feasibility Survey	36	1	36	.167	6.01
Total	72		72		12.02

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: March 27, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–07650 Filed 4–2–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

- *Name of Committee:* Board of Scientific Counselors, NIAMS.

Date: April 23–24, 2013.

Time: 6:00 p.m. to 5:20 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 4C32, Bethesda, MD 20892.

Contact Person: John J. O'Shea, MD, Ph.D., Scientific Director, National Institute of Arthritis & Musculoskeletal and Skin Diseases, Building 10, Room 9N228, MSC 1820, Bethesda, MD 20892, (301) 496–2612, *osheaj@arb.niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07659 Filed 4–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Biology and Therapy.

Date: April 17, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9609 Medical Center Drive, 7–W–106, Rockville, MD, (Telephone Conference Call).

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7–W–106, Bethesda, MD 20892, 240–276–6342, *choe@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting date due to scheduling conflicts.

(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: March 28, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07658 Filed 4–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; Fellowships: Oncological Sciences Overflow.

Date: April 12, 2013.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

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. 93.306, 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: March 28, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07656 Filed 4–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: April 23–24, 2013.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: SIDS and BRAIN.

Date: April 24, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 28, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07655 Filed 4–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

Date: June 11–12, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sergei Radaev, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8113, Bethesda, MD 20892, 301–435–5655, *sradaev@mail.nih.gov.*

(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: March 28, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–07657 Filed 4–2–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0042]

Broad Stakeholder Survey

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C). Office of Emergency Communications (OEC) has submitted the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning the Broad Stakeholder Survey. DHS previously published this ICR in the **Federal Register** on August 20, 2012, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until May 3, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, DHS, Office of Civil Rights and Civil Liberties. Comments must be identified by "DHS–2012–0042" and may be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Amanda Hilliard DHS/NPPD/CS&C/OEC, *Amanda.Hilliard@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: OEC, formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. § 101 et seq., as amended, was established to promote, facilitate, and support the continued advancement of communications capabilities for emergency responders across the Nation. The Broad Stakeholder Survey is designed to gather stakeholder feedback on the effectiveness of OEC services and to gather input on challenges and initiatives for interoperable emergency communications. The Broad Stakeholder Survey will be conducted primarily electronically.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, Office of Emergency Communications.

Title: Broad Stakeholder Survey.

Form: DHS Form 9041.

OMB Number: 1670–NEW.

Frequency: Annual.

Affected Public: Federal, state, local, tribal and territorial government officials.

Number of Respondents: 5,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 1,250 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $30,525.00.

Dated: March 26, 2013.

Scott Libby,

Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2013–07732 Filed 4–2–13; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0193]

Cooperative Research and Development Agreement: Joint Technical Demonstration of Tactical Data Link Range Enhancement Software

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for public comments.

SUMMARY: The Coast Guard is announcing its intent to enter into a Cooperative Research and Development Agreement with Engility Corporation (Engility) to develop, demonstrate, evaluate, and document contributions of tactical data link (TDL) range enhancement software technologies to improve operational effectiveness and communications interoperability (e.g., situational awareness, digital command and control, etc.) among forces including Coast Guard and other Department of Homeland Security components, Department of Defense, as well as other Federal, State, local, Tribal, and coalition forces. While the Coast Guard is currently considering partnering with Engility, we are soliciting public comment on the possible nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider submitting proposals for consideration in similar CRADAs.

DATES: Comments and related material on the proposed CRADA must either be submitted to our online docket via *http://www.regulations.gov* on or before May 3, 2013, or reach the Docket Management Facility by that date.

Synopses of proposals regarding future, similar CRADAs must reach the Docket Management Facility on or before September 30, 2013.

ADDRESSES: You may submit comments on this notice identified by docket number USCG–2013–0193 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Judith R. Connelly, Project Official, C4ISR Branch, TDL Range Enhancement Software Technologies, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2643, email *Judith.R.Connelly@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on this notice. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Potential non-Federal CRADA participants should submit these documents to Judith R. Connelly, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, email *Judith.R.Connelly@uscg.mil.*

Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2013–0193), and provide a reason for each suggestion or recommendation. You may submit your comments and material online via *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and locate this notice by using "USCG–2013–0193" as your search term. Click the "Comment Now" box opposite this notice and follow the instructions to submit your comment. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing Comments and Related Material

To view the comments and related material, go to *http://www.regulations.gov* and locate this notice by using "USCG–2013–0193" as your search term. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Cooperative Research and Development Agreements

Cooperative Research and Development Agreements (CRADAs), are authorized by the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, codified at 15 U.S.C. 3710(a)). A CRADA promotes the transfer of technology to the private sector for commercial use as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding. The Department of Homeland Security (DHS), as an executive agency under 5 U.S.C. 105, is a Federal agency for purposes of 15 U.S.C. 3710(a) and may enter into a CRADA. The Secretary of DHS (Secretary) delegated authority to the Commandant of the Coast Guard to carry out the functions vested in the Secretary by section 2 of the Federal Technology Transfer Act of 1986, which authorizes agencies to permit their laboratories to enter into CRADAs (see DHS Delegation No. 0160.1, para. 2.B(34)). The Commandant of the Coast Guard has delegated authority in this regard to the Coast Guard's Research and Development Center (R&DC).

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with other types of agreements such as procurement contracts, grants, and cooperative agreements.

Goal of Proposed CRADA

Under the proposed CRADA, the Coast Guard's R&DC would collaborate with one or more non-Federal participants. Together, the R&DC and the non-Federal participants would identify and investigate the advantages, disadvantages, required technology enhancements, performance, and other issues associated with TDL range enhancement software to enhance operational effectiveness and efficiency.

The R&DC, with the non-Federal participants, will create and employ a structured and collaborative test protocol to better understand the potential advantages of TDL capabilities throughout Coast Guard mission areas. The non-Federal participants will investigate the use of a wide range of TDL capabilities in table-top exercises followed by controlled field tests, and finally longer-duration operational testing on actual Coast Guard platforms.

Party Contributions

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Lead the development of the test objectives and test plan for the specific work to be accomplished under the CRADA;

(2) Conduct the "field demonstration" analysis of the mutually-agreeable representative TDL range enhancement software using information networks, surveillance/collection platforms, and search and rescue units, in accordance with the CRADA test plan:

(3) Define performance metrics and parameters used to understand the potential improvements of the mutually-agreeable representative TDL range enhancement software in accordance with the CRADA test plan;

(4) Coordinate Coast Guard platform engineering changes and enterprise architecture modifications to incorporate mutually-agreeable representative TDL range enhancement software and supporting hardware configurations in accordance with the CRADA test plan;

(5) Identify cooperative sortie opportunities with Coast Guard and Department of Defense (DOD) search and surveillance assets to understand the potential improvements of the mutually-agreeable representative TDL range enhancement software to link collected data with search platforms outside the information enterprise network;

(6) Develop the CRADA Final Report, which will document the methodologies, findings, conclusions, and recommendations of this CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Provide input into the Coast Guard-developed CRADA test objectives and CRADA test plan;

(2) Provide mutually-agreeable representative TDL range enhancement software and supporting hardware configurations (as required) and conduct preliminary data information sharing validation and equipment "bench testing" in accordance with the CRADA test plan;

(3) Provide expertise needed for platform installation of mutually-agreeable representative TDL range enhancement software and supporting hardware, along with on-site technical support throughout the demonstration;

(4) Provide on-site mission specific training for Coast Guard platform operators throughout the operational demonstration; and

(5) Provide input into the Coast Guard-developed CRADA Final Report.

Selection Criteria

The Coast Guard reserves the right to select for CRADA participants all, some, or none of the proposals in response to this notice. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals (or any other material) submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than four single-sided pages (excluding cover page and resumes). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Engility Corporation for participation in this CRADA. This consideration is based on the fact that Engility has demonstrated its software-only solution, its product's compatibility with the Coast Guard's situational awareness system, and its product's widespread use throughout the DOD and coalition forces. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology transfer/development effort. Presently, the Coast Guard has no plan to procure a TDL capability. Since the goal of this CRADA is to identify and investigate the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with using TDL capabilities, non-Federal CRADA participants will not be excluded from any future Coast Guard procurements based solely on their participation in this CRADA.

Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S.

Authority

This notice is issued under the authority of 15 U.S.C. 3710(a), 5 U.S.C. 552(a), and 33 CFR 1.05–1.

Dated: March 25, 2013.

Alan N. Arsenault,

Captain, USCG, Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2013–07681 Filed 4–2–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3354–EM; Docket ID FEMA–2013–0001]

New Jersey; Amendment No. 4 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of New Jersey (FEMA–3354–EM), dated October 28, 2012, and related determinations.

DATES: *Effective Date:* March 20, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of William L. Vogel as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–07698 Filed 4–2–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4086–DR; Docket ID FEMA–2013–0001]

New Jersey; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of New Jersey (FEMA–4086–DR), dated October 30, 2012, and related determinations.

DATES: *Effective Date:* March 20, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of William L. Vogel as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–07697 Filed 4–2–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2528–12; DHS Docket No. USCIS–2012–0016]

RIN 1615–ZB18

Extension of the Designation of Honduras for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security (Secretary) is extending the designation of Honduras for Temporary Protected Status (TPS) for 18 months from July 6, 2013 through January 5, 2015.

The extension allows currently eligible TPS beneficiaries to retain TPS through January 5, 2015. The Secretary has determined that an extension is warranted because the conditions in Honduras that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Honduras resulting from Hurricane Mitch, and Honduras remains unable, temporarily, to handle adequately the return of its nationals.

This Notice also sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Honduras and whose applications have been granted. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions, if they meet: (1) at least one of the late initial filing criteria and (2) all TPS eligibility criteria (including continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999).

For individuals who have already been granted TPS under the Honduras designation, the 60-day re-registration period runs from April 3, 2013 through June 3, 2013. USCIS will issue new EADs with a January 5, 2015 expiration date to eligible Honduran TPS beneficiaries who timely re-register and apply for EADs under this extension.

Given the timeframes involved with processing TPS re-registration applications, the Department of Homeland Security (DHS) recognizes that all re-registrants may not receive new EADs until after their current EADs expire on July 5, 2013. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Honduras for 6 months, from July 5, 2013 through January 5, 2014, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I–9) and the E-Verify processes.

DATES: The 18-month extension of the TPS designation of Honduras is effective July 6, 2013, and will remain in effect through January 5, 2015. The 60-day re-registration period runs from April 3, 2013 through June 3, 2013.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps*. You can find specific information about this extension of Honduras for TPS by selecting "TPS Designated Country: Honduras" from the menu on the left of the TPS Web page.
- You can also contact the TPS Operations Program Manager at the Family and Status Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status updates.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov*, or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security

DOS—Department of State
EAD—Employment Authorization Document
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
UN—United Nations
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the requirements of TPS status.
- TPS beneficiaries also may be granted travel authorization as a matter of discretion.
- The granting of TPS does not lead to permanent resident status.
- When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

When was Honduras designated for TPS?

On January 5, 1999, the Attorney General designated Honduras for TPS based on an environmental disaster within that country, specifically the devastation resulting from Hurricane Mitch. *See* 64 FR 524; section 244(b)(1)(B) of the INA, 8 U.S.C. 1254a(b)(1)(B). The Secretary last extended the designation of Honduras for TPS on November 4, 2011 based on her determination that the conditions warranting the designation continued to be met. *See* 76 FR 68488. This announcement is the eleventh extension of TPS for Honduras since the original designation in 1999.

What authority does the Secretary of Homeland Security have to extend the designation of Honduras for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate Government agencies, to designate a foreign state (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* section 244(a)(1)(A) of the INA, 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* section 244(b)(3)(A) of the INA, 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation is extended for an additional 6 months (or in the Secretary's discretion for 12 or 18 months). *See* section 244(b)(3)(C) of the INA, 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* section 244(b)(3)(B) of the INA, 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Honduras for TPS through January 5, 2015?

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Honduras. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the disruption in living conditions in affected areas of Honduras resulting from the environmental disaster that prompted the January 5, 1999 designation persist.

In October 1998, Hurricane Mitch caused the loss of thousands of lives, displacement of thousands more, collapse of physical infrastructure, and severe damage to the country's economic system. *See also* 64 FR 524 (Jan. 5, 1999) (Mitch "caus[ed] severe flooding and associated damage in Honduras"). Despite some recovery, the government and people of Honduras continue to rely heavily on international assistance, and recovery from Hurricane Mitch is still incomplete.

Hurricane Mitch brought 250-kilometer-per-hour winds and torrential rains that damaged all eighteen of Honduras's departments. The storm affected in some way nearly 1.5 million people, killing approximately 5,600 and injuring approximately 12,000, and leaving thousands homeless. In northern Honduras, 25 small villages were swept away. It was estimated that 70 percent of crops were destroyed. The medical response was compromised given that 123 health centers and 23 out of the country's 28 hospitals were damaged. 20 to 25 percent of educational establishments were also damaged. Although the international community quickly responded with reconstruction and recovery efforts have been implemented, the United Nations (UN) Development Programme states that Hurricane Mitch set Honduras back economically and socially by more than 20 years.

There has been some recovery in Honduras from the extensive damage caused by Hurricane Mitch. However, reconstruction efforts are still ongoing. According to Honduras's Social Fund for Housing and local government figures, Hurricane Mitch damaged or destroyed approximately 85,000 homes; however, the Honduran Secretary of Health estimated nearly 149,000 homes were damaged or destroyed. While foreign aid has enabled the completion of various housing projects, other international aid destined for housing projects remain ongoing. For example, projects to address housing shortages funded by a $30 million loan approved by the Inter-American Development Bank in 2006 remain in the implementation phase. In addition, despite expansion of electrical services in Honduras, only half of the rural population currently has access to electricity.

Hurricane Mitch destroyed an estimated 60 to 70 percent of road infrastructure. While the road network has been restored, transport infrastructure remains basic and vulnerable to further damage from adverse climactic conditions. The World Bank continues to fund road improvement projects in Honduras, including a May 2009 loan for road rehabilitation and improvement. As of January 2013, this project remains active.

Landslides and floods caused by Hurricane Mitch damaged both the potable water distribution systems and sewage treatment facilities in urban and rural Honduras. This posed serious health risks to the population. The international community responded to the situation with funds designated for

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to the Department of Homeland Security "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying HSA, tit. XV, sec. 1517).

water and sanitation projects. Although there has been improvement, projects are still ongoing. For example, a World Bank project that began in June 2007 is not scheduled to be completed until December 2013. To date, water sources continue to be threatened by deforestation and erosion, and Honduras's largest source of fresh water (the Lago de Yojoa) is heavily polluted.

Subsequent natural disasters have plagued Honduras and exacerbated conditions caused by Hurricane Mitch, making it difficult to assess the status of Hurricane Mitch-related reconstruction projects. Since Hurricane Mitch, a series of natural disasters (such as tropical storms, other hurricanes, and earthquakes) have plagued Honduras, resulting in additional floods, damaged infrastructure, and loss of life. Most recently, Honduras suffered a drought in June 2012, and both a tropical depression and tropical storm in 2011. These natural disasters have compounded the initial devastation and substantial disruption of living conditions caused by Hurricane Mitch. Honduras has endured severe, continuing, and sustained damage to its infrastructure and is considered one of the poorest and most vulnerable countries in the world. Accordingly, the conditions caused by Hurricane Mitch continue to exist.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the January 5, 1999 designation of Honduras for TPS continue to be met. *See* sections 244(b)(3)(A) and (C) of the INA, 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be a substantial, but temporary, disruption in living conditions in Honduras as a result of an environmental disaster. *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- Honduras continues to be unable, temporarily, to handle adequately the return of its nationals (or aliens having no nationality who last habitually resided in Honduras). *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- The designation of Honduras for TPS should be extended for an additional 18-month period from July 6, 2013 through January 5, 2015. *See* section 244(b)(3)(C) of the INA, 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 64,000 current Honduras TPS beneficiaries who are expected to be eligible to re-register for TPS under the extension.

Notice of Extension of the TPS Designation of Honduras

By the authority vested in me as Secretary under section 244 of the INA, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies that the conditions that prompted the designation of Honduras for TPS on January 5, 1999, continue to be met. *See* section 244(b)(3)(A) of the INA, 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing TPS designation of Honduras for 18 months from July 6, 2013 through January 5, 2015.

Janet Napolitano,
Secretary.

Required Application Forms and Application Fees to Register or Re-register for TPS

To register or re-register for TPS for Honduras, an applicant must submit each of the following two applications:

1. Application for Temporary Protected Status (Form I–821).

- If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps*.
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

and

2. Application for Employment Authorization (Form I–765).

- If you are applying for late initial registration and want an EAD, you must pay the fee for Application for the Employment Authorization (Form I–765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I–765) is required if you are under the age of 14 or 66 and older and applying for late initial registration.
- If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you want an EAD.
- You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay for the application and/or biometrics fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and by providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps*. Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov*. If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Refiling a Re-registration TPS Application After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to refile their applications before the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to refile by the re-registration deadline, the applicant may still refile his or her application. This situation will be reviewed under good cause for late re-registration. However, applicants are urged to refile within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* section 244(c)(3)(C) of the INA; 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps*. **Note:** As previously stated, although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the

applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee, until after USCIS has approved the individual's TPS re-registration, if he or she is eligible.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Honduras, 131 S. Dearborn 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD or are re-registering for the first time following a grant of TPS by the IJ or BIA, please mail your application to the appropriate address in Table 1 above. Upon receiving a Receipt Notice from USCIS, please send an email to *TPSijgrant.vsc@uscis.dhs.gov* with the receipt number and state that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. You can find detailed information on what further information you need to email and the email addresses on the USCIS TPS Web page at *http://www.uscis.gov/tps.*

E-Filing

If you are re-registering for TPS during the re-registration period and you do not need to submit any supporting documents or evidence, you are eligible to file your applications electronically. For more information on e-filing, please visit the USCIS E-Filing Reference Guide at the USCIS Web site at *http://www.uscis.gov.*

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Am I eligible to receive an automatic 6 month extension of my current EAD from July 5, 2013 through January 5, 2014?

Provided that you currently have TPS under the Honduras designation, this notice automatically extends your EAD by 6 months if you:

- Are a national of Honduras (or an alien having no nationality who last habitually resided in Honduras);
- Received an EAD under the last extension or re-designation of TPS for Honduras; and
- Have an EAD with a marked expiration date of July 5, 2013, bearing the notation "A–12" or "C–19" on the face of the card under "Category."

Although your EAD is automatically extended through January 5, 2014 by this notice, you must re-register timely for TPS in accordance with the procedures described in this notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I–9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under "List A." Employers may not reject a document based upon a future expiration date.

If your EAD has an expiration date of July 5, 2013, and states "A–12" or "C–19" under "Category", it has been extended automatically for 6 months by virtue of this **Federal Register** notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through January 5, 2014 (see the subsection below titled "*How do I and my employer complete the Employment Eligibility Verification (Form I–9) (i.e., verification) using an automatically extended EAD for a new job?*" for further information). To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** notice confirming the automatic extension of employment authorization through January 5, 2014. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or List B plus List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of July 5, 2013, that state "A–12" or "C–19" under "Category" have been automatically extended for 6 months by virtue of this **Federal Register** notice, your employer will need to ask you about your continued employment authorization once July 5, 2013 is reached in order to meet its responsibilities for Employment Eligibility Verification (Form I–9). However, your employer does not need a new document to reverify your employment authorization until January 5, 2014, the expiration date of the automatic extension. Instead, you and your employer must make corrections to the employment authorization expiration dates in section 1 and section 2 of the Employment Eligibility Verification (Form I–9) (see the subsection below titled "*What corrections should I and my current employer make to the Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?*" for further information). In addition, you may also show this **Federal Register** notice to your employer to avoid confusion about what to do for the Form I–9.

By January 5, 2014, the expiration date of the automatic extension, your employer must reverify your employment authorization. You must present any document from List A or any document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization. Your employer is required to reverify on Employment Eligibility Verification (Form I–9) the employment authorization of current employees no later than the expiration of a TPS-related EAD. Your employer should use either Section 3 of the Form I–9 originally completed for the employee or, if this section has already been completed or if the version of Form I–9 is no longer valid, in Section 3 of a new Form I–9 using the most current version. Note that your employer may not specify which List A or List C document employees must present.

What happens after January 5, 2014 for purposes of employment authorization?

After January 5, 2014, employers may no longer accept the EADs that this **Federal Register** notice automatically extended. However, before that time, USCIS will issue new EADs to TPS re-registrants. These new EADs will have an expiration date of January 5, 2015 and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I–9).

How do I and my employer complete the Employment Eligibility Verification (Form I–9) (i.e., verification) using an automatically extended EAD for a new job?

When using an automatically extended EAD to fill out the Employment Eligibility Verification (Form I–9) for a new job prior to January 5, 2014, you and your employer should do the following:

(1) For Section 1, you should:

a. Check "An alien authorized to work";

b. Write your alien number (USCIS number or A-number) in the first space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS Number is the same as your A-number without the A prefix); and

c. Write the automatic extension date (January 5, 2014) in the second space.

(2) For Section 2, employers should record the:

a. Document title;

b. Document number; and

c. Automatically extended EAD expiration date (January 5, 2014).

No later than January 5, 2014, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to the Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

(1) For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write "January 5, 2014" above the previous date;

c. Write "TPS Ext." in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

(2) For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write "January 5, 2014" above the previous date;

c. Write "TPS Ext." in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By January 5, 2014, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?

If you are an employer who participates in E-Verify, you will receive a "Work Authorization Documents Expiring" case alert when a TPS beneficiary's EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red "X" in the "dismiss alert" column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By January 5, 2014, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Honduran citizenship?

No. When completing Employment Eligibility Verification (Form I–9), including reverifying employment authorization, employers must accept any documentation that appears on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I–9) and that reasonably appears to be genuine and that relates to you. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of Honduran citizenship when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. If presented with EADs that are unexpired on their face, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. See below for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call the USCIS Form I–9 Customer Support at 888–464–4218 (TDD for the hearing impaired is at 877–875–6028). For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 800–255–8155 (TDD for the hearing impaired is at 800–237–2515), which offers language interpretation in numerous languages.

Note to All Employees

For general questions about the employment eligibility verification process, employees may call the USCIS National Customer Service Center at 800–375–5283 (TDD for the hearing impaired is at 800–767–1833); calls are accepted in English and Spanish. Employees or applicants may also call the OSC Worker Information Hotline at 800–255–7688 (TDD for the hearing impaired is at 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages. In order to comply with the law, employers must accept any document or combination of documents acceptable for Employment

Eligibility Verification (Form I–9) completion if the documentation reasonably appears to be genuine and to relate to the employee. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-verify who receive an E-verify initial mismatch ("tentative nonconfirmation" or "TNC") on employees must inform employees of the mismatch and give such employees an opportunity to challenge the mismatch. Employers are prohibited from taking adverse action against such employees based on the initial mismatch unless and until E-Verify returns a final nonconfirmation. For example, employers must allow employees challenging their mismatches to continue to work without any delay in start date or training and without any change in hours or pay while the final E-Verify determination remains pending. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/about/osc* and the USCIS Web site at *http://www.dhs.gov/E-verify*.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal government agencies must follow the guidelines laid out by the Federal government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your expired EAD that has been automatically extended, or your EAD that has a valid expiration date;

(2) A copy of this **Federal Register** notice if your EAD is automatically extended under this notice;

(3) A copy of your Application for Temporary Protected Status Receipt Notice (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I–797), if you receive one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.uscis.gov/save*, then by choosing "How to Correct Your Records" from the menu on the right.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2529–12; DHS Docket No. USCIS–2012–0015]

RIN 1615–ZB19

Extension of the Designation of Nicaragua for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security (Secretary) is extending the designation of Nicaragua for Temporary Protected Status (TPS) for 18 months from July 6, 2013 through January 5, 2015.

The extension allows currently eligible TPS beneficiaries to retain TPS through January 5, 2015. The Secretary has determined that an extension is warranted because the conditions in Nicaragua that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting from Hurricane Mitch, and Nicaragua remains unable, temporarily, to handle adequately the return of its nationals.

This Notice also sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Nicaragua and whose applications have been granted. Certain nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions, if they meet: (1) At least one of the late initial filing criteria and (2) all TPS eligibility criteria (including continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999).

For individuals who have already been granted TPS under the Nicaragua designation, the 60-day re-registration period runs from April 3, 2013 through June 3, 2013. USCIS will issue new EADs with a January 5, 2015 expiration date to eligible Nicaraguan TPS beneficiaries who timely re-register and apply for EADs under this extension.

Given the timeframes involved with processing TPS re-registration applications, the Department of Homeland Security (DHS) recognizes that all re-registrants may not receive new EADs until after their current EADs expire on July 5, 2013. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Nicaragua for 6 months, from July 5, 2013 through January 5, 2014, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I–9) and the E-Verify processes.

DATES: The 18-month extension of the TPS designation of Nicaragua is effective July 6, 2013, and will remain in effect through January 5, 2015. The 60-day re-registration period runs from April 3, 2013 through June 3, 2013.

FURTHER INFORMATION:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps*. You can find specific information about this extension of Nicaragua for TPS by selecting "TPS Designated Country:

Nicaragua" from the menu on the left of the TPS Web page.

- You can also contact the TPS Operations Program Manager at the Family and Status Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status updates.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov*, or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
Government—U.S. Government
IADB—Inter-American Development Bank
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
UN—United Nations
USCIS—U.S. Citizenship and Immigration Services

What Is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the requirements of TPS status.
- TPS beneficiaries also may be granted travel authorization as a matter of discretion.
- The granting of TPS does not lead to permanent resident status.
- When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

When Was Nicaragua Designated for TPS?

On January 5, 1999, the Attorney General designated Nicaragua for TPS based on an environmental disaster within that country, specifically the devastation resulting from Hurricane Mitch. *See* 64 FR 526; section 244(b)(1)(B) of the INA, 8 U.S.C. 1254a(b)(1)(B). The Secretary last extended the Nicaragua TPS designation on November 4, 2011 based on her determination that the conditions warranting the designation continued to be met. *See* 76 FR 68493. This announcement is the eleventh extension of TPS for Nicaragua since the original designation in 1999.

What Authority Does the Secretary of Homeland Security Have To Extend the Designation of Nicaragua for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate Government agencies, to designate a foreign state (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* section 244(a)(1)(A) of the INA, 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* section 244(b)(3)(A) of the INA, 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation is extended for an additional 6 months (or in the Secretary's discretion for 12 or 18 months). *See* section 244(b)(3)(C) of the INA, 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* section 244(b)(3)(B) of the INA, 8 U.S.C. 1254a(b)(3)(B).

Why Is the Secretary Extending the TPS Designation for Nicaragua for TPS Through January 5, 2015?

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Nicaragua. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the disruption in living conditions and other adverse effects resulting from the environmental disaster that prompted the January 5, 1999 designation persist.

In October 1998, Hurricane Mitch resulted in the loss of thousands of lives, displacement of thousands more, collapse of physical infrastructure, and severe damage to the country's economic system. *See also* 64 FR 526 (Jan. 5, 1999) (Mitch "caus[ed] severe flooding and associated damage in Nicaragua"). The government and people of Nicaragua continue to rely heavily on international assistance, and recovery from Hurricane Mitch is still incomplete.

Hurricane Mitch brought extremely heavy rainfall causing severe flooding in Nicaragua. Damage from flooding was extensive and totaled $1.3 to $1.5 billion USD. Landslides and floods destroyed entire villages and caused extensive damage to the transportation network, housing, medical and education facilities, water supply and sanitation facilities, and the agricultural sector. Living conditions remain disrupted in the areas affected by the devastation caused by Hurricane Mitch. Those areas continue to face serious economic and infrastructure challenges stemming from Hurricane Mitch.

Since Hurricane Mitch, the Government of Nicaragua, backed by extensive foreign aid, has undertaken various reconstruction projects throughout the country. Although various projects have been completed, subsequent natural disasters caused extensive damage in Nicaragua, hampering the recovery efforts. Nicaragua is considered the poorest and least developed country in Central America and the second poorest in the Western hemisphere.

Although the international community and the Government of Nicaragua have helped to repair the damage and destruction left behind by Hurricane Mitch, recovery and reconstruction efforts are still ongoing. Nicaragua continues to rely heavily on

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to the Department of Homeland Security "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying HSA, tit. XV, sec. 1517).

international assistance, and recovery from Hurricane Mitch is still incomplete. For example, by some estimates, Hurricane Mitch destroyed or damaged over 500 schools and over 100 health units, including several critical hospitals. The U.S. Agency for International Development (USAID) and the European Union have only constructed or rehabilitated approximately 150 schools and approximately 50 health units. By some estimates, the number of homes destroyed or damaged by Hurricane Mitch ranged as high as 145,000, reportedly leaving approximately 500,000 homeless. International organizations have constructed and rehabilitated only a few thousand homes. These programs, however, have reconstructed a mere fraction of the homes that were damaged or destroyed, resulting in a net housing deficit.

Damages to roads and bridges caused by Hurricane Mitch accounted for approximately 60 percent of Hurricane Mitch-related reconstruction costs. Approximately 8,000 kilometers of roads were damaged and 71 bridges were destroyed. As a result, the country's main cities were physically disconnected from smaller towns and communities. A significant amount of aid was dedicated to repairing and improving road infrastructure. An additional project funded by the World Bank began in 2006, but is not projected to be completed until 2014. Although these projects have been completed or will soon end, only 12 percent of Nicaragua's roads are paved.

Hurricane Mitch damaged potable water, sewage treatment systems, water uptake systems, wells, water pump stations, and pipes in Nicaragua. The storm floods and runoff polluted water sources, leading to a 40 percent disruption in water services throughout the country. While water and sanitation systems are on the whole better than their pre-Mitch status, more than 50 percent of the rural population does not have access to safe water. Furthermore, improvement projects are still ongoing, including water and sanitation projects funded by the Inter-American Development Bank (IADB).

Since Hurricane Mitch, various hurricanes, tropical depressions, and tropical storms have resulted in loss of life, affected thousands of individuals, and caused further damage to homes, infrastructure, and the economy in Nicaragua. Most recently, in October 2011, heavy rains associated with Tropical Depression 12E caused further damages totaling approximately $445 million USD. These natural disasters have been the biggest challenge towards achieving sustainable long-term post Hurricane Mitch recovery in the areas affected by Mitch. They have compounded the initial devastation and resulting disruption in living conditions caused by Hurricane Mitch.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the January 5, 1999 designation of Nicaragua for TPS continue to be met. *See* sections 244(b)(3)(A) and (C) of the INA, 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be a substantial, but temporary, disruption in living conditions in Nicaragua as a result of an environmental disaster. *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- Nicaragua continues to be unable, temporarily, to handle adequately the return of its nationals (or aliens having no nationality who last habitually resided in Nicaragua). *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- The designation of Nicaragua for TPS should be extended for an additional 18-month period from July 6, 2013 through January 5, 2015. *See* section 244(b)(3)(C) of the INA, 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 3,000 current Nicaragua TPS beneficiaries who are expected to be eligible to re-register for TPS under the extension.

Notice of Extension of the TPS Designation of Nicaragua

By the authority vested in me as Secretary under section 244 of the INA, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Nicaragua for TPS on January 5, 1999, continue to be met. *See* section 244(b)(3)(A) of the INA, 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing TPS designation of Nicaragua for 18 months from July 6, 2013 through January 5, 2015.

Janet Napolitano,
Secretary.

Required Application Forms and Application Fees To Register or Re-register for TPS

To register or re-register for TPS for Nicaragua, an applicant must submit each of the following two applications:

1. Application for Temporary Protected Status (Form I–821)

- If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

and

2. Application for Employment Authorization (Form I–765)

- If you are applying for late initial registration and want an EAD, you must pay the fee for Application for the Employment Authorization (Form I–765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I–765) is required if you are under the age of 14 or 66 and older and applying for late initial registration.
- If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you want an EAD.
- You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay for the application and/or biometrics fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and by providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information

on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov*. If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Refiling a Re-registration TPS Application After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to refile their applications before the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to refile by the re-registration deadline, the applicant may still refile his or her application. This situation will be reviewed under good cause for late re-registration. However, applicants are urged to refile within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* section 244(c)(3)(C) of the INA; 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps*. **Note:** As previously stated, although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee, until after USCIS has approved the individual's TPS re-registration, if he or she is eligible.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If...	Mail to...
You are applying through the U.S. Postal Service.	USCIS, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Nicaragua, 131 S. Dearborn 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD or are re-registering for the first time following a grant of TPS by the IJ or BIA, please mail your application to the appropriate address in Table 1 above. Upon receiving a Receipt Notice from USCIS, please send an email to *TPSijgrant.vsc@uscis.dhs.gov* with the receipt number and state that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. You can find detailed information on what further information you need to email and the email addresses on the USCIS TPS Web page at *http://www.uscis.gov/tps*.

E-Filing

If you are re-registering for TPS during the re-registration period and you do not need to submit any supporting documents or evidence, you are eligible to file your applications electronically. For more information on e-filing, please visit the USCIS E-Filing Reference Guide at the USCIS Web site at *http://www.uscis.gov*.

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Am I eligible to receive an automatic 6 month extension of my current EAD from July 5, 2013 through January 5, 2014?

Provided that you currently have TPS under the Nicaragua designation, this notice automatically extends your EAD by 6 months if you:

- Are a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua);
- Received an EAD under the last extension or re-designation of TPS for Nicaragua; and
- Have an EAD with a marked expiration date of July 5, 2013, bearing the notation "A–12" or "C–19" on the face of the card under "Category."

Although your EAD is automatically extended through January 5, 2014 by this notice, you must re-register timely for TPS in accordance with the procedures described in this notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I–9Central*. Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under "List A." Employers may not reject a document based upon a future expiration date.

If your EAD has an expiration date of July 5, 2013, and states "A–12" or "C–19" under "Category", it has been extended automatically for 3 months by virtue of this **Federal Register** notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through January 5, 2014 (see the subsection below titled "*How do I and my employer complete the Employment Eligibility Verification (Form I–9) (i.e., verification) using an automatically extended EAD for a new job?*" for further information). To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** notice confirming the automatic extension of employment authorization through January 5, 2014. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or List B plus List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of July 5, 2013, that state "A–12" or "C–19" under "Category" have been automatically extended for 6 months by virtue of this **Federal Register** notice, your employer will need to ask you about your continued employment authorization once July 5, 2013 is reached in order to meet its responsibilities for Employment Eligibility Verification (Form I–9). However, your employer does not need a new document to reverify your employment authorization until January 5, 2014, the expiration date of the automatic extension. Instead, you and

your employer must make corrections to the employment authorization expiration dates in section 1 and section 2 of the Employment Eligibility Verification (Form I–9) (see the subsection below titled "*What corrections should I and my current employer make to the Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?*" for further information). In addition, you may also show this **Federal Register** notice to your employer to avoid confusion about what to do for the Form I–9.

By January 5, 2014, the expiration date of the automatic extension, your employer must reverify your employment authorization. You must present any document from List A or any document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization. Your employer is required to reverify on Employment Eligibility Verification (Form I–9) the employment authorization of current employees no later than the expiration of a TPS-related EAD. Your employer should use either Section 3 of the Form I–9 originally completed for the employee or, if this section has already been completed or if the version of Form I–9 is no longer valid, in Section 3 of a new Form I–9 using the most current version. Note that your employer may not specify which List A or List C document employees must present.

What happens after January 5, 2014 for purposes of employment authorization?

After January 5, 2014, employers may no longer accept the EADs that this **Federal Register** notice automatically extended. However, before that time, USCIS will issue new EADs to TPS re-registrants. These new EADs will have an expiration date of January 5, 2015 and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I–9).

How do I and my employer complete the Employment Eligibility Verification (Form I–9) (i.e., verification) using an automatically extended EAD for a new job?

When using an automatically extended EAD to fill out the Employment Eligibility Verification (Form I–9) for a new job prior to January 5, 2014, you and your employer should do the following:

(1) For Section 1, you should:

a. Check "An alien authorized to work";

b. Write your alien number (USCIS number or A-number) in the first space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS Number is the same as your A-number without the A prefix); and

c. Write the automatic extension date (January 5, 2014) in the second space.

(2) For Section 2, employers should record the:

a. Document title;

b. Document number; and

c. Automatically extended EAD expiration date (January 5, 2014).

No later than January 5, 2014, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to the Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

(1) For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write "January 5, 2014" above the previous date;

c. Write "TPS Ext." in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

(2) For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write "January 5, 2014" above the previous date;

c. Write "TPS Ext." in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By January 5, 2014, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?

If you are an employer who participates in E-Verify, you will receive a "Work Authorization Documents Expiring" case alert when a TPS beneficiary's EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red "X" in the "dismiss alert" column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By January 5, 2014, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Nicaraguan citizenship?

No. When completing Employment Eligibility Verification (Form I–9), including reverifying employment authorization, employers must accept any documentation that appears on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I–9) and that reasonably appears to be genuine and that relates to you. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of Nicaraguan citizenship when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. If presented with EADs that are unexpired on their face, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. See below for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process,

employers may call the USCIS Form I–9 Customer Support at 888–464–4218 (TDD for the hearing impaired is at 877–875–6028). For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 800–255–8155 (TDD for the hearing impaired is at 800–237–2515), which offers language interpretation in numerous languages.

Note to All Employees

For general questions about the employment eligibility verification process, employees may call the USCIS National Customer Service Center at 800–375–5283 (TDD for the hearing impaired is at 800–767–1833); calls are accepted in English and Spanish. Employees or applicants may also call the OSC Worker Information Hotline at 800–255–7688 (TDD for the hearing impaired is at 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages. In order to comply with the law, employers must accept any document or combination of documents acceptable for Employment Eligibility Verification (Form I–9) completion if the documentation reasonably appears to be genuine and to relate to the employee. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-verify who receive an E-verify initial mismatch ("tentative nonconfirmation" or "TNC") on employees must inform employees of the mismatch and give such employees an opportunity to challenge the mismatch. Employers are prohibited from taking adverse action against such employees based on the initial mismatch unless and until E-Verify returns a final nonconfirmation. For example, employers must allow employees challenging their mismatches to continue to work without any delay in start date or training and without any change in hours or pay while the final E-Verify determination remains pending. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/about/osc* and the USCIS Web site at *http://www.dhs.gov/E-verify*.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal government agencies must follow the guidelines laid out by the Federal government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your expired EAD that has been automatically extended, or your EAD that has a valid expiration date;

(2) A copy of this **Federal Register** notice if your EAD is automatically extended under this notice;

(3) A copy of your Application for Temporary Protected Status Receipt Notice (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I–797), if you receive one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.uscis.gov/save*, then by choosing "How to Correct Your Records" from the menu on the right.

[FR Doc. 2013–07674 Filed 4–2–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOSO50000 L13100000.DB0000]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Bull Mountain Unit Master Development Plan, Gunnison County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Uncompahgre Field Office, Montrose, Colorado, intends to prepare an Environmental Impact Statement (EIS) to analyze a Master Development Plan (MDP) that proposes to drill up to 150 wells within the Bull Mountain Unit (146 natural gas wells and 4 water disposal wells) and to construct associated access roads, pipelines and infrastructure.

DATES: The BLM held a public scoping period while preparing an Environmental Assessment (EA) for the 150-well Bull Mountain Unit MDP from September 21 to November 13, 2009. The preliminary EA was available for a 30-day public comment period from March 23 to April 23, 2012.

ADDRESSES: You may submit comments related to the proposed Bull Mountain Unit MDP by any of the following methods:

- Email: *bullmtneis@blm.gov*,
- Fax: 970–240–5368,and
- Mail: 2465 South Townsend Ave. Montrose, CO 81401.

Documents pertinent to this proposal may be examined at the BLM Uncompahgre Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jerry Jones, Bull Mountain EIS Project Manager, telephone 970–240–5300; address 2465 South Townsend Ave., Montrose, CO 81401; email *bullmtneis@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The proponent, SG Interests, Ltd., submitted

an MDP to the BLM for the Bull Mountain Unit. The Unit is located on approximately 19,645 acres of Federal and private subsurface mineral estate approximately 30 miles northeast of the Town of Paonia and bisected by State Highway 133. The proposal is to drill up to 146 natural gas wells and 4 water disposal wells, and develop associated pads, access roads, gas and water pipelines, screw compressors and overhead electric lines. This project was analyzed in a preliminary EA; the BLM determined it is necessary to prepare an EIS due to projected air quality impacts.

The project was initially scoped from October 29 to December 12, 2008, for 55 natural gas wells and 5 water disposal wells. The MDP proposal changed in September 2009 to include up to 146 natural gas wells and 4 water disposal wells. The BLM held a new public scoping period for the revised MDP from September 21 to November 13, 2009. The BLM released the preliminary EA for a 30-day public review and comment period on March 23, 2012.

While there will not be another formal scoping period, all previous comments from the public will be considered in the EIS. The BLM will continue to accept and consider public comments to guide the development of this EIS and the resulting decision. Written comments on the scope of alternatives and issues will be particularly helpful for the BLM. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS

At present, the BLM has identified the following preliminary issues: Air quality; water quality and supply; threatened, endangered, and sensitive wildlife species; wildlife and wildlife habitat; recreation and visual resources; socio-economics; and transportation. The BLM will use NEPA public participation requirements to assist in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed Bull Mountain Unit MDP will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Bull Mountain Unit MDP may request or be requested by the BLM to participate in the development of the EIS as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2013–07751 Filed 4–2–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO923000 L14300000.ET0000; COC–2422401]

Notice of Proposed Withdrawal and Opportunity for a Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Policy, Management and Budget proposes to withdraw, on behalf of the Bureau of Land Management (BLM), 2,214.31 acres of public lands in Chaffee County, Colorado, to protect the scenic, recreational, and other natural resource values along with the capital investments of developed recreational facilities found within the scenic Browns Canyon corridor along the Arkansas River. This notice segregates the public lands for up to 2 years from location and entry under the United States mining laws and gives the public an opportunity to comment on the application and to request a public meeting.

DATES: Comments and public meeting requests must be received on or before July 2, 2013.

ADDRESSES: Comments and meeting requests should be sent to the BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: John D. Beck, Chief, Branch of Lands and Realty, 303–239–3882. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM filed an application requesting the Assistant Secretary for Policy, Management and Budget to withdraw, subject to valid existing rights, the following described public lands from location and entry under the United States mining laws, for a period of 20 years, to protect the scenic, recreational, and other natural resource values along with the capital investments of developed recreational facilities found within the scenic Browns Canyon corridor along the Arkansas River:

New Mexico Principal Meridian

T. 51 N., R. 8 E.,
- Sec. 11, lots 1, 2, and 3, S½NE¼, E½SE¼, NW¼SE¼, and E½SW¼SE¼;
- Sec. 12, W½W½SW¼;
- Sec. 13, W½NW¼NW¼;
- Sec. 14, NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
- Sec. 23, W½NE¼, E½E½NW¼, E½SW¼, and W½W½SE¼;
- Sec. 26, W½NE¼, NE¼NW¼, E½SE¼NW¼, E½SW¼, SE¼SW¼SW¼, NW¼SE¼, and W½SW¼SE¼;
- Sec. 34, S½NE¼NE¼ and SE¼NE¼;
- Sec. 35, N½NW¼ and N½SW¼NW¼.

Sixth Principal Meridian

T. 15 S., R. 77 W.,
- Sec. 30, lots 2, 3, and 4;
- Sec. 31, lots 1 to 4, inclusive, and W½E½W½.

T. 15 S., R. 78 W.,
- Sec. 12, SW¼SW¼;
- Sec. 13, E½SW¼ and SW¼SE¼;
- Sec. 24, W½NE¼ and N½SE¼;
- Sec. 25, SE¼NE¼ and E½SE¼.

The areas described aggregate 2,214.31 acres of public lands in Chaffee County.

The Assistant Secretary for Policy, Management and Budget approved the BLM's petition/application; therefore, the petition constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal is to protect scenic, recreational, and other natural resource values found within the scenic Browns Canyon corridor along the Arkansas River and the capital investments of developed recreational sites. The proposed withdrawal is within the boundaries of the Browns Canyon Area of Critical Environmental Concern (ACEC). The ACEC includes all of the

Browns Canyon Wilderness Study Area to the east of the river and was established to protect the area's naturalness, water-related recreation, scenic, and visual qualities.

The use of a right-of-way, interagency or cooperative management agreement would not adequately constrain non-discretionary uses that could irrevocably destroy the area's scenic and recreational values.

There are no suitable alternative sites as the described lands contain the natural resource and recreation values in need of protection.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

Records relating to the application may be examined by contacting Debbie Bellew, BLM Colorado State Office at the above address or by telephone at 303–239–3707.

For the period until July 2, 2013, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal application may present their views in writing to the BLM Colorado State Office at the address noted above. Comments, including names and street addresses of respondents, will be available for public review at the BLM Colorado State Office, at the address above, during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Individual respondents may request confidentiality. Before including your address, phone number, email address, or any other personal identifying information in your comments, you should be aware that your entire comment—including 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 view, we cannot guarantee that we will be able to do so. If you wish to withhold your name, street address, and/or email address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Colorado State Director no later than July 2, 2013. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/co/st/en.html*, at least 30 days before the scheduled date of the meeting.

For a period until April 3, 2015, the lands described in this notice will be segregated from location and entry under the United States mining laws unless the application is denied or cancelled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of the authorized officer of the BLM during the temporary segregative period.

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.3.

Helen M. Hankins,

State Director.

[FR Doc. 2013–07748 Filed 4–2–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[13X LLIDB00200 LF2200000.JS0000 LFESG40D0000]

Notice of Temporary Closure on Public Lands in Boise County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure

SUMMARY: Notice is hereby given that the Springs Fire closure to all human use is in effect on public lands administered by the Four Rivers Field Office, Bureau of Land Management (BLM).

DATES: The Springs Fire closure will be in effect from April 3, 2013 through June 30, 2013.

FOR FURTHER INFORMATION CONTACT: Terry Humphrey, Four Rivers Field Manager, at 3948 Development Avenue, Boise, Idaho 83705, phone (208) 384–3300. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Springs Fire closure affects public lands surrounding Skinny Dipper Hot Springs, near Banks, Idaho, that burned August 5, 2012. The affected public lands include Lot 3; Section 25, T. 9 N., R.3 E., Boise Meridian, Boise County, Idaho, containing approximately 41 acres. The Springs Fire closure is necessary because there is an increased danger to the recreating public around the hot springs due to fire damage, as a result of the loss of stabilizing vegetation upstream from the hot springs as identified in the Springs Fire Emergency Stabilization and Burned Area Rehabilitation Plan dated August 28, 2012. Rainfall during the spring season (April–June) could result in rock falls, flooding, or debris flows. Reestablishment of vegetation is anticipated to occur during this year's spring growth, which will significantly reduce the safety risk.

The BLM will post closure signs at main access and entry points to the closed area. The closure notices will also be posted in the BLM Boise District office. Maps of the affected areas and other documents associated with these closures are available at the BLM Boise District Office, 3948 Development Avenue, Boise, Idaho 83705 and on the BLM–Idaho Web site: *http://www.blm.gov/id/st/en/advisories-closures.html*.

The BLM will enforce the following rule within the Springs Fire closure: Human activity is not allowed within the closed area.

Exemptions: The following persons are exempt from this order: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the BLM. The Springs Fire human use closure does not apply to normal highway traffic along the Banks-Lowman Highway.

Penalties: Any person who violates the above rule may be tried before a United States Magistrate and fined, not to exceed $1,000, imprisoned for no more than 12 months, or both. Violators may also be subject to the enhanced fines provided for in 18 U.S.C. 3571.

Authority: 43 CFR 8360.0–7; 43 CFR 8364.1.

Matthew McCoy,

Four Rivers Assistant Field Manager.

[FR Doc. 2013–07761 Filed 4–2–13; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–12555; PPWOCRADI0, PCU00RP14.R50000]

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 March 9, 2013. 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 April 18, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 14, 2013.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ALABAMA

Shelby County

Downtown Montevallo Historic District, 555–925 Main, 710–745 Middle & 608 Valley Sts., Montevallo, 13000180

CALIFORNIA

Santa Clara County

Hakone Historic District, 21000 Big Basin Way, Saratoga, 13000181

GEORGIA

Floyd County

Howell Grocery, 601 S. Broad, Rome, 13000182

ILLINOIS

Clark County

Marshall Business Historic District, Archer Ave. & area between Plum, S. 5th, Locust & Michigan Aves., Marshall, 13000183

Cook County

Building at 320 West Oakdale Avenue, 320 W. Oakdale Ave., Chicago, 13000184

Walser, Joseph J., House, 42 N. Central Ave., Chicago, 13000185

Kane County

Pure Oil Station, 502 W. State St., Geneva, 13000186

MAINE

Hancock County

Hancock Point School, 644 Point Rd., Hancock, 13000187

Waldo County

Marsh School, 930 Bangor Rd., Prospect, 13000188

York County

Lincoln School, 8 Orchard Rd., Acton, 13000189

MISSOURI

Cole County

Bockrath, Henry and Elizabeth, House, (Southside Munichburg, Missouri MPS) 309 W. Dunkin St., Jefferson City, 13000190

Iron County

Ironton Lodge Hall, 133 N. Main St., Ironton, 13000191

Jackson County

Mount Washington School, (Kansas City, Missouri School District Pre-1970 MPS) 570 S. Evanston Ave.. Independence, 13000192

Wholesale District, 701 Broadway & 330 W. 8th St., Kansas City, 13000193

St. Louis Independent City

Walnut Park School, (St. Louis Public Schools of William B. Ittner MPS) 5314 Riverview Blvd., 5814 Thekla Ave., St. Louis (Independent City), 13000194

NEBRASKA

Douglas County

Nottingham Apartments, The, 3304 Burt St., Omaha, 13000195

Omaha Park and Boulevard System, 20 city parks, 4 golf courses & 19 connecting blvds. including Riverview, Hanscom & Fontenelle Parks., & Blvd.s., Omaha, 13000196

Ottawa Block, The, 2401 Farnam St., Omaha, 13000197

Hall County

Lincoln Highway—Grand Island Seedling Mile, (Lincoln Highway in Nebraska MPS) Seedling Mile Rd., Grand Island, 13000198

Kearney County

Bethphage Mission, 1044 23rd Rd., Axtell, 13000199

Platte County

Citizens State Bank, 204 Pine St., Creston, 13000200

NEW JERSEY

Bergen County

World War I Monument, Jct. of Chestnut St., Park, Passaic & Lincoln Aves., Rutherford Borough, 13000201

Morris County

Ledgewood Historic District, Main & Canal Sts., Circle Dr., Emmans & Mountain Rds., Ledgewood, 13000202

Somerset County

Spencer—Hollingsworth House, 1370 Johnston Dr., Watchung, 13000203

NORTH CAROLINA

Durham County

Foster and West Geer Streets Historic District, Bounded by W. Corporation, Madison & Washington Sts., Rigsbee Ave., N&SRR tracks, 724 & 733 Foster St., Durham, 13000204

Forsyth County

Forsyth County Courthouse, 11 W. 3rd St., Winston-Salem, 13000205

Orange County

Pope, Capt. John S., Farm, 6909 Efland-Cedar Grove Rd., Cedar Grove, 13000206

TEXAS

Howard County

Settles Hotel, 200 E. 3rd St., Big Spring, 13000207

WASHINGTON

King County

Calhoun Hotel, 2000 2nd Ave., Seattle, 13000208

Supply Laundry Building, 1265 Republican St., Seattle, 13000209

Union Stables, 2200 Western Ave., Seattle, 13000210

Yakima County

Bumping Lake Resort, 781 Bumping Lake Rd., Naches, 13000211

WYOMING

Sheridan County

Holy Name Catholic School, (Educational Facilities in Wyoming,

1850–1960 MPS) 121 S. Connor St., Sheridan, 13000212

[FR Doc. 2013–07676 Filed 4–2–13; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2948]

Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof*, DN 2948; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS [1], and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC [2]. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS [3]. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of ResMed Corp., ResMed Inc. and ResMed Ltd. on March 28, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof. The complaint names as respondents Apex Medical Corp. of Taiwan; Apex Medical USA Corp. of CA; and Medical Depot Inc. (d/b/a Drive Medical Design & Manufacturing) of NY.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 2948") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [5].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: March 29, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–07699 Filed 4–2–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–103–027]

Probable Economic Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of opportunity to provide written comments.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

SUMMARY: Following receipt of a request dated March 11, 2013 from the U.S. Trade Representative (USTR), under authority delegated by the President and pursuant to section 103 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3313), the Commission instituted investigation No. TA–103–027, *Probable Economic Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin.*

DATES:

June 4, 2013: Deadline for filing written submissions.

November 12, 2013: Transmittal of report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project Leader Kimberlie Freund (202–708–5402 or *Kimberlie.freund@usitc.gov)* or Deputy Project Leader Philip Stone (202–205–3424 or *philip.stone@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov).* Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: In his request letter (dated March 11, 2013), the USTR stated that U.S. negotiators have recently reached agreement in principle with representatives of the governments of Canada and Mexico on proposed modifications to Annex 401 of the NAFTA. Chapter 4 and Annexes 401 and 403 of the NAFTA set forth the rules of origin for applying the tariff provisions of the NAFTA to trade in goods. Section 202(q) of the NAFTA Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to rules of origin as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission.

In the request letter, the USTR asked that the Commission provide advice on the probable economic effect of the proposed modifications on U.S. trade under the NAFTA, on total U.S. trade, and on domestic industries. The investigation covers a wide variety of articles, including edible preparations; mineral fuels; chemical products; plastics; rubber articles; cork; glass and glassware; copper, nickel, and other base metals; machinery and parts; rail locomotives; trailers; optical and medical instruments; furniture; toys and games; lighters; and smoking pipes. The USTR attached to the request letter a list of the proposed modifications to the NAFTA Rules of Origin. On March 19, 2013, USTR provided the Commission with an additional document making certain clarifications to the list of modifications in the attachment to the March 11, 2013, letter in the form of a correlation table for certain tariff lines for Canada and Mexico. The request letter, the complete list of proposed modifications, and the clarifying correlation table are available on the Commission's Web site at *http://www.usitc.gov/research_and_analysis/What_We_Are_Working_On.htm.* As requested, the Commission will provide its advice to USTR by November 12, 2013.

Written Submissions: No public hearing is planned. However, interested parties are invited to file written submissions and other information concerning the matters to be addressed in this investigation. All written submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions relating to the Commission's advice should be submitted at the earliest possible date, and should be received not later than 5:15 p.m. June 4, 2013. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested, the Commission will issue a public version of its report, with any confidential business information deleted, shortly after it transmits its report.

Issued: March 28, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–07652 Filed 4–2–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0005]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Notice of Entry of Appearance as Attorney or Representative; Before the Board of Immigration Appeals (Form EOIR–27)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 3, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection without change.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–27. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys or representatives notifying the Board of Immigration Appeals (Board) that they are representing a party in proceedings before the Board. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Board that he or she is representing a party before the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 28,068 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,068 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2013–07666 Filed 4–2–13; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0012]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR–31)

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty *days*" until June 3, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, ncluding through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–31. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Non-profit organizations seeking to be recognized as legal service providers by the Board of Immigration Appeals (Board) of the Executive Office for Immigration Review (EOIR). Other: None. Abstract: This information collection is necessary to determine whether the organization meets the regulatory and relevant case law requirements for recognition by the Board as a legal service provider, which then would allow its designated representative or representatives to seek full or partial accreditation to practice

before EOIR and/or the Department of Homeland Security.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 158 respondents will complete the form annually with an average of 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 316 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: March 28, 2013.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–07668 Filed 4–2–13; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0006]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR–28)

ACTION: 60-day notice.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 3, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection without change.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–28. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys and qualified representatives notifying the Immigration Court that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Immigration Court that he or she is representing an alien before the Immigration Court.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 174,609 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 17,460 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407, Washington, DC 20530.

Dated: March 28, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–07667 Filed 4–2–13; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 28, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Hawaii in the lawsuit entitled *United States and State of Hawaii* v. *Marisco, Ltd.*, Civil Action No. 13–00146–LEK–RLP.

This consent decree will resolve claims asserted by the United States and the State of Hawaii against Marisco, Ltd. for injunctive relief and civil penalties based on violations of the Clean Water Act. The complaint in this lawsuit alleges that Marisco violated the regulations that govern the discharge of pollutants at the defendant's shipyard and drydock facility at Barbers Point Harbor near Kapolei, Hawaii. The consent decree requires the defendant to perform injunctive relief and pay a civil penalty of $710,000.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Hawaii* v. *Marisco, Ltd.*, D.J. Ref. No.90–5–1–1–09870. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–07701 Filed 4–2–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 — American Society of Mechanical Engineers

Notice is hereby given that, on March 5, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the American Society of Mechanical Engineers ("ASME") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since August 22, 2012, ASME has published one new standard, initiated six new standards activities, established two new consensus committees, revised the charter of one consensus committee, withdrawn one published standard, and withdrawn one proposed standard from consideration within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *www.asme.org*.

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on August 27, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 2012 (77 FR 58412).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–07705 Filed 4–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on March 8, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Novartis Institutes for BioMedical Research, Inc., Cambridge, MA; Wolfram Teetz (individual), Planegg, GERMANY; Sanofi-Aventis Deutschland GmbH, Frankfurt, GERMANY; Robert E. Schwartz (individual), Seaside Park, NJ; and Harsha K. Rajasimha (individual), Derwood, MD, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on September 20, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 26, 2012 (77 FR 65413).

Patricia A. Brink,

Director of Civil Enforcement Antitrust Division.

[FR Doc. 2013–07706 Filed 4–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0052]

Agency Information Collection Activities; Proposed Collection; Comments Requested: National Drug Threat Survey; Extension With Change of a Previously Approved Collection

ACTION: 60-Day Notice.

The United States Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 3, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Richard L. Nagy, Unit Chief, Domestic Strategic Intelligence Unit, Office of Intelligence, Warning, Plans and Programs, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection 1117–0052:

(1) *Type of Information Collection:* Extension of a currently approved collection with change.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, Tribal, and Local law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment and other reports and assessments produced by the Drug Enforcement Administration. It provides direct access to detailed drug threat data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 3,500 respondents will complete a survey response within approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,167 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530

Dated: March 28, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–07665 Filed 4–2–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 3–13]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Friday, April 12, 2013: 12:00 p.m.—Consideration of petitions to reopen Final Decisions in claims against Libya; 12:30 p.m.—Issuance of Proposed Decisions in claims against Albania.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2013–07895 Filed 4–1–13; 4:15 pm]

BILLING CODE 4410–BA–P

MARINE MAMMAL COMMISSION

Sunshine Act Notice

TIME AND DATE: The Marine Mammal Commission will meet in open session on Friday, 12 April 2013, in Silver Spring, Maryland, from 9:00 a.m. to 5:00 p.m.

PLACE: The meeting on will be held in the National Oceanic and Atmospheric Administration's Science Center, 1301 East-West Highway, Silver Spring, Maryland 20910.

STATUS: The Commission expects that all portions of this meeting will be open to the public. It will allow public participation as time permits and as determined to be desirable by the Chairman. Should it be determined that it is appropriate to close a portion of the meeting to the public, any such closure will be carried out in accordance with applicable regulations (50 CFR 560.5 and 560.6).

Seating for members of the public at this meeting may be limited. The Commission therefore asks that those intending to attend advise it in advance by sending an email to the Commission at *mmc@mmc.gov* or by calling (301) 504–0087. Members of the public will need to present valid, government-issued photo identification to enter the building where the meeting will be held.

MATTERS TO BE CONSIDERED: The Commission plans to meet with management and scientific officials in the National Marine Fisheries Service headquarters office to identify and discuss the agency's most pressing marine mammal research and management needs. The Commission already has met with staff in each of the Service's six regions to discuss these matters. The Commission intends to use the information from these meetings to develop a set of national priorities for guiding federal conservation efforts for marine mammals. Members of the public have been invited to attend all of the regional meetings, as well as the meeting with headquarter's staff and to provide comments concerning priority issues. Those unable to attend any of the meetings may submit comments in writing. Written comments should be sent to Timothy J. Ragen, Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, Maryland 20814.

CONTACT PERSON FOR MORE INFORMATION: Timothy J. Ragen, Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; (301) 504–0087; email: *tragen@mmc.gov.*

Dated: April 1, 2013.

Michael L. Gosliner,

General Counsel.

[FR Doc. 2013–07861 Filed 4–1–13; 4:15 pm]

BILLING CODE 6820–31–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506 and 3507), the Merit Systems Protection Board (MSPB or Board) announces that an Information Collection Request (ICR) was forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR is for MSPB's revised Appeal Form (MSPB Form 185), We request public comments on the revised form, which is available for review (along with the comments previously received) on MSPB's Web site at *http://www.mspb.gov/appeals/revisedappealform.htm.*

DATES: Written comments must be received on or before May 3, 2013.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW.,

Washington, DC 20503, Attention: Desk Officer for the Merit Systems Protection Board, or send them via electronic mail to *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; telephone 202–653–7200; fax 202–653–7130; email *mspb@mspb.gov*. Persons without Internet access may request a paper copy of MSPB Form 185 from the Office of the Clerk of the Board.

Revised MSPB Appeal Form 185

On December 3, 2012, MSPB published a 60-day notice in the **Federal Register** (77 FR 71640) of our intent to submit this proposed information collection to OMB for review and approval. The MSPB received a number of comments regarding its proposed revisions to MSPB Form 185 from Federal agencies, employees, attorney associations, and individual representatives. The revisions to the form include streamlining and reorganizing the introductory instructions; updating appellant/agency information; clarifying hearing request information; providing information regarding affirmative defenses and particular classes of appeals (Individual Right of Action (IRA), Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), and Veterans Employment Opportunities Act of 1998 (VEOA)) in a new Appendix A; consolidating certain sections and eliminating others as superfluous; and providing full contact information for each of the Board's regional and field offices in a new Appendix B.

The following sentence has been added to the section, "Time Limits for Filing an Appeal," on page 1: "The 30-day time limit may also be extended if you have previously filed a formal equal employment opportunity (EEO) complaint regarding the same matter, as described in Appendix A."

Instructions about which parts of the form must be completed for particular classes of appeals were added, and references to requested documents in boxes 16 and 18 were bolded for added visibility. In addition, language in box 16 has been changed to read, as follows: "Explain briefly why you think the agency was wrong in taking this action, including whether you believe the agency engaged in harmful procedural error, committed a prohibited personnel practice, or engaged in one of the other claims listed in Appendix A. Attach the agency's proposal letter, decision letter, and SF–50, if available. Attach additional sheets if necessary (bearing in mind that there will be later opportunities to supplement your filings)."

Language in box 26, requesting information regarding a designated representative, has been changed to read as follows: "Has an individual or organization agreed to represent you in this proceeding before the Board? (You may designate a representative at any time. However, it is unlikely that the appeals process will be delayed for reasons related to obtaining or maintaining representation. Moreover, you must promptly notify the Board in writing of any change in representation.)"

Appendix A: The second sentence under the heading, "Prohibited Personnel Practices," has been changed to read as follows: "Among the prohibited personnel practices most likely to be relevant as an affirmative defense in an MSPB proceeding are: Unlawful discrimination under subsection (b)(1); retaliation for protected whistleblowing under subsection (b)(8); and retaliation for other protected activity under subsection (b)(9)."

In order to include additional bases of prohibited discrimination and their corresponding statutory foundation, the heading, "Unlawful Discrimination," has been changed to read as follows: "A claim that the agency action was the result of prohibited discrimination based on race, color, religion, sex, national origin, disability, age, marital status, political affiliation, genetic information, and retaliation for prior EEO activity. *See 5 U.S.C 2302*(b)(1) and *7702*; *5 CFR Part 1201, Subpart E*; *29 CFR Part 1630* and *Appendix to Part 1630*; *42 U.S.C. 2000ff et seq.*; *29 CFR 1614.302–.308*. If you filed a formal discrimination complaint, give the date on which you did so, state whether and when the agency issued a final decision on your discrimination complaint, and provide copies of both."

In order to include new provisions introduced by passage of the Whistleblower Protection Enhancement Act (WPEA), the title and content of the headings, "Retaliation for whistleblowing activity under 5 U.S.C. § 2302(b)(8)," and "Retaliation for other protected activity under 5 U.S.C. § 2302(b)(9)," have been changed to read as follows:

"Retaliation for whistleblowing activity under *5 U.S.C. 2302*(b)(8) and (b)(9)(A)(i), (B), (C), or (D): A claim that the agency action was taken in retaliation for the disclosure of information the individual reasonably believes demonstrates a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety, or in retaliation for exercise of the right to appeal, complain, or grieve an alleged violation of Subsection (b)(8); for testifying or otherwise lawfully assisting another's right to appeal, complain, or grieve such an alleged violation; for cooperating with or disclosing information to the Inspector General or Special Counsel in accordance with applicable provisions of law; or for refusing to obey an order that would require a violation of law. *See 5 CFR 1209.4*(b).

"Retaliation for other protected activity under *5 U.S.C. 2302*(b)(9)(A)(ii): A claim that the agency action was taken in retaliation for the exercise of a right, other than with regard to remedying an alleged violation of *5 U.S.C. 2302*(b)(8), such as the filing of an appeal, complaint, or grievance."

The first paragraph under the hearing, "IRA, USERRA, and VEOA Appeals," has been changed to read as follows:

"The law provides for three types of appeals in certain situations that might not otherwise be appealable to the MSPB (*See 5 CFR 1201.3*(a) for a list of otherwise appealable actions): Individual Right of Action (IRA) appeals under the Whistleblower Protection Act (WPA) and Whistleblower Protection Enhancement Act (WPEA) pursuant to *5 U.S.C. 1221*; appeals under the Uniformed Services Employment and Reemployment Rights Act (USERRA) pursuant to *38 U.S.C. 4324*; and appeals under the Veterans Employment Opportunities Act (VEOA) pursuant to *5 U.S.C. 3330a*. Note: As previously set forth, allegations of retaliation for whistleblowing, as well as allegations under USERRA and VEOA, may be brought as additional claims in cases that are otherwise appealable to the Board."

Also reflecting changes arising from passage of the WPEA, the title and content of the heading, "IRA Appeals under the Whistleblower Protection Act," has been changed to read as follows:

"IRA Appeals under the WPA and WPEA. Subsection (b)(8) of *5 U.S.C. § 2302* makes it a prohibited personnel practice to threaten, propose, take, or not take a personnel action listed in *5 U.S.C. 2302*(a)(2) because of an individual's disclosure of information that he or she reasonably believes shows a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety. *Subsections* (b)(9)(A)(i), (B), (C), and (D) make it a prohibited personnel

practice to threaten, propose, take, or not take a personnel action because an appellant exercised the right to appeal, complain, or grieve an alleged violation of Subsection (b)(8); testified or otherwise lawfully assisted another's right to appeal, complain, or grieve such an alleged violation; cooperated with or disclosed information to the Inspector General or Special Counsel in accordance with applicable provisions of law; or refused to obey an order that would require a violation of law. *See 5 CFR 1209.4.* If the personnel action allegedly taken in reprisal for making a protected disclosure or engaging in protected activity is not otherwise appealable to the Board, you must first file a whistleblower complaint with the Office of Special Counsel (OSC) and exhaust the procedures of that office, *see 5 U.S.C. 1214*(a)(3), before you may file an IRA appeal with the Board under *5 U.S.C. § 1221.*"

Finally, instructions regarding the impact of filing a formal EEO complaint on the Board's timeliness requirements are included under the heading, "Time Limits for filing IRA, USERRA, and VEOA Appeals, and following the filing of a Formal EEO Complaint," as follows: "Formal EEO Complaints. If you have previously filed a formal Equal Employment Opportunity (EEO) complaint regarding the same matter, you must file your Board appeal within 30 days after receiving the agency's resolution or final decision as to that complaint, or you may file at any time after 120 days have elapsed from the filing of the complaint in the absence of such an agency resolution or decision. *See 5 CFR1201.154(b).*"

Estimated Reporting Burden

In accordance with the requirements of the PRA, MSPB is soliciting comments on the public reporting burden for this information collection. The public reporting burden for this collection of information is estimated to vary from 20 minutes to 4 hours, with an average of 60 minutes per response, including time for reviewing the form and instructions, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information.

Specifically, MSPB invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of the MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

ESTIMATED REPORTING BURDEN

5 CFR parts	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201, 1208 and 1209	7,150	1	7,150	1.0	7,150

William D. Spencer,

Clerk of the Board.

[FR Doc. 2013–07692 Filed 4–2–13; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: April 2013

TIME AND DATES: All meetings are held at 2:00 p.m. Wednesday, April 3; Thursday, April 4; Wednesday, April 10; Thursday, April 11; Wednesday, April 17; Thursday, April 18; Wednesday, April 24; Thursday, April 25.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: *Henry Breiteneicher,* Associate Executive Secretary, (202) 273–2917.

Dated: April 1, 2013.

Henry Breiteneicher,

Associate Executive Secretary.

[FR Doc. 2013–07881 Filed 4–1–13; 4:15 pm]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286; NRC–2013–0063]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is reconsidering its issuance of a revision of an existing exemption from its regulations, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Fire Areas ETN–4 and PAB–2, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit 3 (Indian Point 3), located in Westchester County, NY."

DATES: Submit comments by May 3, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0063. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0063. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Douglas V. Pickett, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1364; email: *Douglas.Pickett@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0063 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0063.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application for exemption, dated July 24, 2006, is available under ADAMS Accession No. ML062140057. The Environmental Assessment and Finding of No Significant Impact, dated September 24, 2007, is available under ADAMS Accession No. ML072110018. The NRC letter approving the exemption, dated September 28, 2007, is available under ADAMS Accession No. ML072410254.

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

B. Submitting Comments

Please include Docket ID NRC–2013–0063 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is reconsidering its issuance of a revision of an existing exemption from part 50 of Title 10 of the Code of Federal Regulations (10 CFR), Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Fire Areas ETN–4 and PAB–2, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit 3 (Indian Point 3), located in Westchester County, NY."

On July 24, 2006, Indian Point 3 submitted an exemption request from the requirement of 10 CFR Part 50, Appendix R, III, G.2 for a 1-hour rating fire barrier. On September 28, 2007, the NRC issued the exemption. As required by 10 CFR 51.21, the NRC prepared an Environmental Assessment (EA) and finding of no significant impact (FONSI). The EA on the impacts of the exemption and FONSI were published in the **Federal Register** (FR) on the same day the exemption was issued (72 FR 55254). The exemption was then implemented at Indian Point Unit 3. A draft EA for public comment was not issued for this licensing action.

In 2007, Mr. Richard Brodsky, then a New York State Assemblyman, and others petitioned the NRC to hold a public hearing before granting the exemption. The NRC denied Mr. Brodsky's petition. In 2008, these petitioners filed suit in the U.S. Court of Appeals for the Second Circuit, challenging NRC's denial of a hearing. The Court of Appeals denied the petition for lack of jurisdiction, but afforded petitioners an opportunity to refile their claims in U.S. District Court. In 2011, the U.S. District Court for the Southern District of New York granted NRC summary judgment on the refiled claims, finding no violation of the Administrative Procedure Act, the Atomic Energy Act, or the National Environmental Policy Act (NEPA) in the denial of a hearing on the exemption. Petitioners then sought review of that decision in the U.S. Court of Appeals for the Second Circuit.

On January 7, 2013, the Second Circuit reversed and vacated the U.S. District Court decision with respect to public participation on the EA and FONSI issued in support of the exemptions. The Circuit Court remanded the case to the District Court "with instructions for it in turn to remand to the NRC so that the agency may: (1) Supplement the administrative record to explain why allowing public input into the exemption request was inappropriate or impracticable, or (2) take such other action as it may deem appropriate to resolve this issue." The Court directed that proceedings were to be concluded within 120 days of the Mandate, which was issued on March 1, 2013.

In response to the Mandate of the U.S. Court of Appeals, the NRC is issuing for public comment, pursuant to 10 CFR 51.33, this Draft Environmental Assessment and Finding of No Significant Impact. As necessary, the underlying action (i.e., approval of the exemptions) may be modified in light of public comments.

The NRC notes that, subsequent to its action approving the requested exemptions in 2007, and petitioners' court challenges, the agency amended 10 CFR 51.22, which describes NRC's actions categorically excluded from further environmental review under NEPA. *See* 75 FR 20248 (April 19, 2010). That 2010 rulemaking expanded the scope of an existing categorical exclusion in 10 CFR 51.22(c)(9) to include approvals of licensee exemption requests. Thus, under the revised provisions of 10 CFR 51.22(c)(9), the NRC need not prepare any environmental review for exemptions from the requirements of Parts 50 and 52 "with respect to installation or use of a facility component located within the restricted area, as defined in [10 CFR Part 20], or which changes an inspection or surveillance requirement," provided there are no significant hazards considerations, no significant increase in offsite effluents, and no significant occupational dose increase.

Although NRC approval of exemptions that meet the criteria of this section no longer require preparation of an EA/FONSI, the NRC retains discretion to prepare an EA and FONSI, including an opportunity for public comment, where special circumstances exist. *See* 10 CFR 51.22(b), and 51.33.

III. Draft Environmental Assessment and Finding of No Significant Impact

Identification of the Proposed Action

The proposed action would revise the January 7, 1987, safety evaluation (SE) to reflect that the installed Hemyc electrical raceway fire barrier system (ERFBS) configurations provide either a 30-minute fire resistance rating, or in one case a 24-minute fire resistance rating, in lieu of the previously stated 1-hour fire resistance rating. The licensee states that a Hemyc ERFBS fire resistance rating will provide sufficient protection for the affected raceways, with adequate margin, to continue to meet the intent of the original requests for exemption and conclusions presented in the NRC's January 7, 1987, SE. The licensee concludes that the revised fire resistance rating of the Hemyc ERFBS does not reflect a reduction in overall fire safety, and presents no added challenge to the credited post-fire safe-shutdown capability which remains materially unchanged from the configuration originally described in previous letters and as credited in the January 7, 1987, SE.

The proposed action is in accordance with the licensee's application dated July 24, 2006, as supplemented by letters dated April 30, May 23, and August 16, 2007.

The Need for the Proposed Action

The proposed revision of existing exemptions from 10 CFR Part 50, Appendix R, is needed in response to NRC Information Notice 2005–07, dated April 1, 2005, ADAMS Accession No. ML050890089. The information notice provided licensees the details of Hemyc ERFBS full-scale fire tests conducted by the NRC's Office of Nuclear Regulatory Research. The test results concluded that the Hemyc ERFBS does not provide the level of protection expected for a 1-hour rated fire barrier, as originally designed. The proposed revision to existing exemptions would revise the fire resistance rating of Hemyc ERFBS configurations.

Environmental Impacts of the Proposed Action

The NRC has completed its SE of the proposed action and concludes that the configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate. Based on the presence of redundant safe-shutdown trains, minimal fire hazards and combustibles, automatic cable tray fire suppression system, manual fire suppression features, fire barrier protection, existing Hemyc configuration, and the installed smoke detection system, the NRC staff finds that the use of this Hemyc fire barrier in these zones will not significantly increase the consequences from a fire in these fire zones.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for INDIAN POINT 3, dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on February 13, 2007, the NRC staff consulted with the New York State official, Alyse Peterson of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

IV. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated July 24, 2006, April 30, 2007, May 23, 2007, and August 16, 2007, (ADAMS Accession Nos. ML062140057, ML071280504, ML071280504, ML072400369).

Dated at Rockville, Maryland, this 26th day of March 2013.

For the Nuclear Regulatory Commission.

Sean C. Meighan,

Acting Chief, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–07703 Filed 4–2–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–09068; License SUA–1598; NRC–2008–0391]

Lost Creek ISR, LLC, Lost Creek Uranium In-Situ Recovery Project, Sweetwater County, Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact for license amendment; availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment to Source Materials License SUA–1598 for continued uranium production operations and *in-situ* recovery (ISR) of uranium at the Lost Creek Project in Sweetwater County, Wyoming.

ADDRESSES: Please refer to Docket ID NRC–2008–0391 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0391. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System*

(ADAMS): You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS). In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a Table in Section IV of this notice.

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

FOR FURTHER INFORMATION CONTACT: Mr. Alan B. Bjornsen, Project Manager, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1195; email: *Alan.Bjornsen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Lost Creek ISR, LLC (LCI) is proposing to install two rotary vacuum dryers in the pre-existing space that was made available in the Central Processing Plant (CPP), and requesting to increase their production rate at the facility from 455,000 kilograms (kg) [1 million pounds (lb)] to up to 909,000 kg [2 million lb] of dry yellowcake per year. The licensee intends to increase production of yellowcake at the facility by accepting equivalent feed including loaded (uranium-laden) resin from other uranium recovery facilities, including potential future satellite facilities, but has not requested a license amendment to increase the flow rate at the Lost Creek wellfields. The NRC has prepared an Environmental Assessment (EA) in support of this proposed license amendment, in accordance with the requirements in Part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC is also conducting a safety evaluation of the proposed license amendment, pursuant to 10 CFR part 40. The results of the safety evaluation will be documented in a separate Safety Evaluation Report (SER). If approved, the NRC will issue the amended license following the publication of this notice. The amended license and associated SER will be made available in ADAMS.

II. Environmental Assessment Summary

On January 6, 2012, LCI (a wholly-owned subsidiary of UR-Energy, Inc. of Littleton, Colorado) submitted an application to the NRC to amend NRC License SUA–1598 to include yellowcake rotary vacuum drying as an option within the CPP at the Lost Creek ISR Facility, and subsequent offsite shipment of vacuum dried yellowcake up to 909,000 kg [2 million lb] per year. This EA includes an evaluation of the potential environmental impacts of the action requested in LCI's license amendment application. The Lost Creek ISR Facility, which is currently under construction, is located in northeastern Sweetwater County, Wyoming, in the Wyoming West Uranium Milling Region identified in NUREG–1910, "Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities" (GEIS).

The proposed action to include yellowcake rotary vacuum drying in the CPP at the Lost Creek ISR Facility, and subsequent offsite shipment of dried yellowcake up to 909,000 kg [2 million lb] per year is not expected to result in significant additional impacts to the environment for the following reasons: (1) The licensee intends to increase dry yellowcake production in the future by accepting equivalent feed including loaded resins from other uranium recovery facilities and potential future satellite facilities, this would not affect the flow rate from the existing Lost Creek well fields; and (2) the dryers would be installed in a pre-existing space inside the CPP (identified in the existing license), there would be no physical changes to the footprint or structure of the building. As a result, there would be no additional impacts to the following resources: land use; geology and soils; water resources; ecological resources; visual and scenic resources; noise; historic and cultural resources; socioeconomics; and environmental justice. The resources that could be potentially affected are transportation, groundwater, air quality, public and occupational health, and waste management.

III. Finding of No Significant Impact

Based on the information presented in this EA describing the proposed action, the need for the proposed action, the alternatives to the proposed action, the environmental impacts of the proposed action and alternatives, and the agencies consulted, the NRC has determined that the proposed action will not have a significant impact on the quality of the human environment and does not warrant the preparation of an Environmental Impact Statement. Accordingly, the NRC has determined that a finding of no significant impact is appropriate.

This finding and any related environmental documents are available for public inspection through ADAMS and may be accessed from the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.*

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's ADAMS, which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following Table:

Document	ADAMS Accession No.
Acceptance of Receipt of Request to Amend License to Operate Two Rotary Vacuum Dryers at Lost Creek Project, February 1, 2012.	ML120330008
Acknowledge Receipt of Responses to the Request For Additional Information, March 12, 2012	ML120730084
Summary of Teleconference and Response to RAIs for Supplemental Information to License Amendment Application, June 12, 2012.	ML12153A287
Letter to WDEQ, Request for Comments	ML12305A410
E-mail response from WDEQ	ML13045A502
Environmental Assessment	ML13045A829
E-mail from LCI Regarding the Increase in Production and the Number of Resin Trucks Likely to Come from a Future Satellite Facility.	ML13078A342

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 25th day of March, 2013.

For the U.S. Nuclear Regulatory Commission.

Aby Mohseni,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–07704 Filed 4–2–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0062]

Reporting Procedure for Mathematical Models Selected To Predict Heated Effluent Dispersion in Natural Water Bodies

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 4.4, "Reporting Procedure for Mathematical Models Selected to Predict Heated Effluent Dispersion in Natural Water Bodies." The guide is being withdrawn because it is obsolete and new guidance has been included in models developed by the Environmental Protection Agency (EPA) that provides updated direction.

ADDRESSES: Please refer to Docket ID NRC–2013–0062 when contacting the NRC about the availability of information on this document. You may access information related to this document, which the NRC possesses and is publicly-available, using any of the following methods:

- *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*. To begin search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, or 301–415–4737, or by email at *PDR.Resource@NRC.Gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The review for the withdrawal of RG 4.4 is available in ADAMS under Accession No. ML12269A378.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

The documents are not copyrighted and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Ralph Cady, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–251–7445; or by email at *Ralph.Cady@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is withdrawing RG 4.4 because its guidance has been superseded and is no longer needed. The guide was published in May 1974, to provide guidance on meeting the requirements in § 51.20 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Criteria for and Identification of Licensing and Regulatory Actions Requiring Environmental Impact Statements."

Regulatory Guide 4.4 provided guidance to licensees on a procedure acceptable to the NRC staff for providing summary details of mathematical modeling methods used in predicting the dispersion of heated effluent in natural water bodies. The guide included an itemized table of relevant modeling factors to accompany descriptive material for the one or more models submitted by an applicant. However, neither licensees nor the NRC staff are currently following the explicit recommendations in this guide, in part because the EPA has developed a mathematical model for this purpose that is often used by both NRC staff and licensees.

EPA's National Pollutant Discharge Elimination System (NPDES) program regulates the discharge of effluents (including heated water) into natural water bodies and requires analyses for permitted discharge. EPA has supported the development of a model (CORMIX) for NPDES analyses that is generally used by both NRC staff and licensees. Industry groups, such as the American Petroleum Institute, also have guidance to support these analyses. A few other well-accepted models for heated effluent dispersion also exist and are used in license applications and by the NRC staff in their reviews.

II. Further Information

The withdrawal of RG 4.4 does not alter any prior or existing licensing commitments based on its use. The guidance provided in this guide is no longer necessary. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological innovations, congressional actions, or other events.

Regulatory guides are revised for a variety of reasons and the withdrawal of an RG should be thought of as the final revision of the guide. Although an RG is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal of a guide means that the guide should not be used for future NRC licensing activities. However, although a regulatory guide is withdrawn, changes to existing licenses can be accomplished using other regulatory products.

Regulatory guides and publicly available NRC documents are available electronically through the NRC Library on the NRC's public Web site at: *http://www.nrc.gov/reading-rm/doc-collections/*. The documents can also be viewed online for free or printed for a fee in the NRC's Public Document Room (PDR) at 11555 Rockville Pike, Rockville, MD; the mailing address is USNRC PDR, Washington, DC 20555–0001; telephone: 301–415–4737, or 1–800–397–4209; fax 301–415–3548; or by email to *pdr.resource@nrc.gov*. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 22nd day of March, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Branch Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–07702 Filed 4–2–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30439; 812–14035]

Sage Quant Management LLC, et al.; Notice of Application

March 28, 2013.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

APPLICANTS: Sage Quant Management LLC ("Adviser"), and Sage Quant ETF Trust ("Trust") and ETF Distributors LLC.

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) Certain open-end management investment companies or series thereof to issue shares ("Shares") redeemable in large aggregations only ("Creation Unit Aggregations"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Unit Aggregations; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on May 29, 2012, and amended on October 9, 2012, March 12, 2013 and March 27, 2013.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 500 West Putnam Ave., Suite 400, Greenwich, CT 06830.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and organized as a Delaware statutory trust. The Trust will initially offer one series, the Sage Quant Low Volatility and Dividend Fund ("Initial Fund"), whose performance will correspond to the price and yield performance, before fees and expenses, of a specified securities index ("Underlying Index").[1]

2. Applicants request that the order apply to the Initial Fund and any future series of the Trust or other registered open-end management investment company or series thereof that seeks to track an Underlying Index ("Future Funds," and together with the Initial Fund, the "Funds").[2] Any Fund (a) will be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser (each, an "Adviser") and (b) will comply with the terms and conditions of the application.

3. Funds may be based on Underlying Indices that contain: (i) Only domestic equity securities ("Domestic Equity"), (ii) only domestic fixed income securities ("Domestic Fixed Income"), (iii) a blend of domestic equity and fixed income securities ("Blended Domestic," collectively Blended Domestic, Domestic Equity and Domestic Fixed Income Funds, are referred to as "Domestic Funds"); (iv) only international equity securities ("International Equity"); (v) only international fixed income securities ("International Fixed Income"); or (vi) a blend of International Equity and International Fixed Income securities ("Blended International," collectively Blended International, International Equity and International Fixed Income Funds, are referred to as "International Funds"). Collectively, the Blended Domestic Funds, Blended International Funds and a combination of Blended Domestic and Blended International Funds ("Blended Global Funds") are the "Blended Funds." Future Funds also may be based on Underlying Indices that only contain global equity securities ("Global Equities") and Underlying Indices that only contain global fixed income securities ("Global Fixed Income") (collectively, any Future Fund based on a Global Fixed Income Index or Global Equity Index are "Global Funds").

4. An Adviser will be the investment adviser to the Funds. Sage Quant Management LLC is a Delaware limited liability company. Any Adviser is or will be registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser may enter into sub-advisory agreements with one or more investment advisers each of which will serve as a sub-adviser to a Fund (each, a "Sub-adviser"). Each Sub-adviser will be registered or not subject to registration under the Advisers Act. ETF Distributors LLC is a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"). ETF Distributors LLC will serve as the distributor and principal underwriter of the Shares of Funds ("Distributor"). In the future another broker-dealer registered under the Exchange Act may act as Distributor. No Distributor may be an affiliated person with any Exchange or any Index Provider (as defined below).

5. Each Fund will consist of a portfolio of securities and other assets and positions ("Portfolio Instruments") selected to correspond generally to the price and yield performance of an Underlying Index.[3] No entity that

[1] The Underlying Index for the Initial Fund is SQ Low Volatility and Dividend Index.

[2] All entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. An Acquiring Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[3] Applicants represent that at least 80% of each Fund's total assets (exclusive of collateral held from securities lending) will be invested in securities

Continued

creates, compiles, sponsors or maintains an Underlying Index ("Index Provider") is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person of the Trust, a Fund, the Adviser, any Sub-adviser, or promoter of a Fund, or of a Distributor.

6. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but may not hold all, of the Component Securities of its Underlying Index. Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5 percent.

7. The Trust will sell and redeem Creation Units Aggregations on a "Business Day," which is defined to include any day that the Trust is required to be open under section 22(e) of the Act. Fund Shares will range from $25 to $250 per Share and the price of Creation Unit Aggregations will range from $1 million to $10 million. All orders to purchase Creation Unit Aggregations must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor ("Authorized Participant"). Distributor will deliver Fund's prospectus and a confirmation to those persons acquiring Creation Unit Aggregations and will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares. An Authorized Participant must be either (1) a "Participating Party," (*i.e.*, a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing house registered with the Commission, or (2) a participant in the Depository Trust Company ("DTC," and such participant, "DTC Participant"), which, in either case, has signed a "Participant Agreement" with the Distributor.

8. Shares will be purchased and redeemed in Creation Unit Aggregations and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Unit Aggregations by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").[4] On any given Business Day the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in a Fund's portfolio (including cash positions),[5] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[6] (c) "to be announced" transactions ("TBA Transactions"),[7] short positions, derivatives and other positions that cannot be transferred in kind[8] will be excluded from the Deposit Instruments and the Redemption Instruments;[9] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[10] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a "Rebalancing"). If there is a difference between the net asset value ("NAV") attributable to a Creation Unit Aggregation and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit Aggregation, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

9. Purchases and redemptions of Creation Unit Aggregations may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[11] (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments

that comprise its respective Underlying Index ("Component Securities"), or in the case of Domestic Fixed Income Funds and Blended Domestic Funds, in Component Securities of its respective Underlying Index and TBA Transactions (as defined below) representing Component Securities, and in the case of Global Funds and International Funds, in Component Securities and depositary receipts. Each Fund may also invest the remaining 20% of its total assets in securities not included in its Underlying Index and other financial instruments which the Adviser or Sub-adviser believes will help the Fund in tracking the performance of the Underlying Index.

[4] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[5] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[6] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[7] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[8] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[9] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (defined below).

[10] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[11] In determining whether a particular Fund will sell or redeem Creation Unit Aggregations entirely on a cash or in kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's or Sub-adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Unit Aggregations either on an all cash basis or in kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in kind redemption. As a result, tax considerations may warrant in kind redemptions.

or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of International Funds, Blended Global Funds and Global Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit Aggregation, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of an International Fund, Blended Global Fund or Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[12]

10. Each Business Day, before the open of trading on a the national securities exchange (as defined in section 2(a)(26) of the Act) ("Exchange") on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and the list of Redemption Instruments will apply until new lists are announced on the following Business Day, and there will be no intra-day changes to the lists except to correct errors in the published lists. The Exchange will disseminate every 15 seconds throughout the regular trading hours through the facilities of the Consolidated Tape Association the estimated intra-day NAV calculated and disseminated in accordance with the relevant listing standards of the relevant Exchange.

11. Shares will be listed and traded on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

12. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors, arbitrageurs, traders and other market participants. Exchange specialists or market makers also may purchase Creation Unit Aggregations for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[13] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Unit Aggregations at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

13. Shares will not be individually redeemable. To redeem, an investor must accumulate enough Shares to constitute Creation Unit Aggregations. Redemption orders must be placed by or through an Authorized Participant.

14. Neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an "exchange-traded fund", an "investment company," a "fund," or a "trust." All marketing materials that describe the features or method of obtaining, buying or selling Creation Unit Aggregations, or Shares listed and traded on an Exchange or refer to redeemability, will prominently disclose that (1) Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Unit Aggregations only, and (2) the purchase and sale price of individual Shares trading on an Exchange may be below, at, or above the most recently calculated NAV for such Shares. The same approach will be followed in the shareholder reports and other investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Unit Aggregations only. Applicants state that investors may purchase Shares in Creation Unit Aggregations and redeem Creation Unit Aggregations from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to buy and sell Shares in the secondary market at prices that do not vary materially from their NAV.

[12] A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[13] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

Section 22(d) of the Act and Rule 22c–1 Under the Act

Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

4. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

5. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve Fund assets and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Unit Aggregations for International Funds, Blended Global Funds, and Global Funds will be contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles in foreign markets in which those Funds invests. Applicants state that under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to twelve (12) calendar days. Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each International Fund, Blended Global Fund and Global Fund customarily clear and settle, but in all cases no later than 12 calendar days following the tender of a Creation Unit Aggregation.[14] With respect to Future Funds that are International Funds, Blended Global Funds or Global Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Unit Aggregations of a Fund to be made within twelve (12) calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for each affected International Fund, Blended Global Fund and Global Fund. Applicants are not seeking relief from section 22(e) with respect to International Funds, Blended Global Funds or Global Funds that do not effect redemptions of Creation Unit Aggregations in-kind.

[14] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies ("Acquiring Management Companies") and unit investment trusts ("Acquiring Trusts") registered under the Act that are not sponsored or advised by the Adviser and are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, "Acquiring Funds") to acquire Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit each Fund and any broker-dealer that is registered under the Exchange Act to sell Shares to Acquiring Funds in excess of the limits of section 12(d)(1)(B).

11. Each Acquiring Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Acquiring Fund Adviser") and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an "Acquiring Fund Sub-adviser"). Any Acquiring Fund Adviser or Acquiring Fund Sub-adviser will be registered or not subject to registration under the Advisers Act. Each Acquiring Trust will be sponsored by a sponsor ("Sponsor").

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section

12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither an Acquiring Fund nor an Acquiring Fund Affiliate would be able to exert undue influence over a Fund.[15] To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting an Acquiring Fund Adviser, Sponsor, any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor ("Acquiring Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Acquiring Fund Sub-adviser, any person controlling, controlled by or under common control with the Acquiring Fund Sub-adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Sub-adviser or any person controlling, controlled by or under common control with the Acquiring Fund Sub-adviser ("Acquiring Fund's Sub-Advisory Group"). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Sub-adviser, Sponsor or employee of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Sub-adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Acquiring Management Company, including a majority of the directors or trustees who are not interested directors or trustees within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Acquiring Management Company may invest. In addition, under condition 13, an Acquiring Fund Adviser, or an Acquiring Trust's trustee ("Trustee") or Sponsor, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Acquiring Fund Adviser, Trustee or Sponsor or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, in connection with the investment by the Acquiring Fund in the Fund. Applicants state that any sales loads or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[16]

15. Applicants submit condition 15 addresses concerns over meaninglessly complex fund structures. Under condition 15, no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure that Acquiring Funds comply with the terms and conditions of the requested order, the Acquiring Funds must enter into an agreement with the respective Funds ("Acquiring Fund Agreement"). The Acquiring Fund Agreement will require the Acquiring Fund to adhere to the terms and conditions of the requested order and participate in the proposed transactions in a manner that addresses concerns regarding the requested relief from section 12(d)(1). The Acquiring Fund Agreement also will include an acknowledgement from the Acquiring Fund that it may rely on the requested order only to invest in Funds and not in any other investment company. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Unit Aggregations by an Acquiring Fund. To the extent that an Acquiring Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the Acquiring Fund Agreement prior to any investment by an Acquiring Fund in excess of the limits of section 12(d)(1)(A).

Section 17 of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second-tier affiliate"), from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines control as the power to exercise a controlling influence over the management of policies of a company. It also provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser (an "Affiliated Fund").

17. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or

[15] An "Acquiring Fund Affiliate" is the Acquiring Fund Adviser, Acquiring Fund Sub-adviser(s), Sponsor, promoter or principal underwriter of an Acquiring Fund, and any person controlling, controlled by or under common control with any of these entities. A "Fund Affiliate" is the Adviser, Sub-adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[16] All references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

second-tier affiliates of the Fund solely by virtue of one or more of the following: (1) Holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (2) having an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

18. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Unit Aggregations through in-kind transactions. Except for permitted cash-in-lieu amounts, the Deposit Instruments and Redemption Instruments will be the same for all purchasers and redeemers regardless of the their identity. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Unit Aggregations will be the same for all purchases and redemptions, regardless of size or number. Deposit Instruments and Redemption Instruments will be valued in the same manner as Portfolio Instruments are valued for purposes of calculating NAV. Applicants submit that, by using the same standards for valuing Portfolio Instruments as are used for calculating the value of Deposit Instruments and Redemption Instruments, the Fund will ensure that its NAV will not be adversely affected by such transactions. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

19. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person or second-tier affiliate of an Acquiring Fund to sell its Shares to and redeem its Shares from an Acquiring Fund, and to engage in the accompanying in-kind transactions with the Acquiring Fund.[17] Applicants state that the terms of the proposed transactions will be fair and reasonable and will not involve overreaching. Applicants note that any consideration paid by an Acquiring Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[18] The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Unit Aggregations directly from a Fund to represent that the purchase will be in compliance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. Further, absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively and will correspond pro rata to the Fund's Portfolio Instruments, except as described above. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

ETF Relief

1. As long as a Fund operates in reliance on the requested order, its Shares will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Unit Aggregations only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

Section 12(d)(1) Relief

Applicants agree that any order granting the requested 12(d)(1) relief will be subject to the following conditions:

5. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Fund's Advisory Group or the Acquiring Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Fund Shares. This condition does not apply to the Acquiring Fund's Sub-Advisory Group with respect to a Fund for which the Acquiring Fund Sub-adviser or a person controlling, controlled by, or under common control with the Acquiring Fund Sub-adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

6. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

7. The board of directors or trustees of an Acquiring Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and any Acquiring Fund Sub-adviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

8. Once an investment by an Acquiring Fund in Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors/trustees of the Trust ("Board"), including a majority of

[17] To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Acquiring Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Unit Aggregations by a Fund to an Acquiring Fund and redemptions of those Shares. The requested relief also is intended to cover the in-kind transactions that may accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person or second-tier affiliate of an Acquiring Fund because the Adviser provides investment advisory services to the Acquiring Fund.

[18] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

the disinterested directors/trustees, will determine that any consideration paid by the Fund to the Acquiring Fund or an Acquiring Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

9. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

10. The Board, including a majority of the disinterested directors/trustees, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

11. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

12. Before investing in Shares in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their respective boards of directors or trustees and their investment adviser(s) or their Sponsors or Trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

13. The Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from the Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Sub-adviser will waive fees otherwise payable to the Acquiring Fund Sub-adviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Sub-adviser, or an affiliated person of the Acquiring Fund Sub-adviser, other than any advisory fees paid to the Acquiring Fund Sub-adviser or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Sub-adviser. In the event that the Acquiring Fund Sub-adviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

14. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

15. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

16. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07729 Filed 4–2–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9397; 34–69257, File No. 265–28]

Dodd-Frank Investor Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of Securities and Exchange Commission Dodd-Frank Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting on Thursday, April 11, 2013, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549. The meeting will begin at 10:00 a.m. (EDT) and end at 4:00 p.m. and will be open to the public, except during portions of the meeting reserved for meetings of the Committee's subcommittees. The meeting will be webcast on the Commission's Web site at *www.sec.gov*. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The agenda for the meeting includes: (i) Approval of minutes; (ii) consideration of a recommendation of the Investor as Purchaser subcommittee regarding target date funds; (iii) subcommittee meetings; and (iv) subcommittee updates.

DATES: Written statements should be received on or before April 11, 2013.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form *(http://www.sec.gov/rules/other.shtml)*; or
- Send an email message to *rules-comments@sec.gov*. Please include File No. 265–28 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Stop 1090, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: M. Owen Donley, Chief Counsel, at (202) 551–6322, Office of Investor Education and Advocacy, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

Dated: March 29, 2013.

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2013–07718 Filed 4–2–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69249; File No. SR–MSRB–2013–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Relating to Amendments to MSRB Rules G–37 and G–8 and Form G–37

March 28, 2013.

I. Introduction

On February 4, 2013, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to MSRB Rules G–37, on political contributions and prohibitions on municipal securities business, and G–8, on books and records, and Form G–37. The proposed rule change was published for comment in the **Federal Register** on February 14, 2013.[3] The Commission received four comment letters on the proposal.[4] The MSRB submitted a response on March 26, 2013.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

MSRB Rule G–37 requires dealers to disclose on Form G–37 certain contributions to issuer officials, contributions to bond ballot campaigns, and payments to political parties of states and political subdivisions, made by brokers, dealers and municipal securities dealers ("dealers"), their municipal finance professionals ("MFPs"), political action committees controlled by the dealer or their MFPs or non-MFP executive officers (collectively, "covered parties"). Further, MSRB Rule G–37 prohibits dealers from engaging in municipal securities business with an issuer within two years after contributions are made by certain covered parties (other than certain permitted *de minimis* contributions) to an official of such issuer. The rule's prohibition on engaging in municipal securities business, however, is currently not triggered by contributions made to bond ballot campaigns by covered parties. MSRB Rule G–37 also requires dealers to maintain records of reportable contributions to bond ballot campaigns pursuant to MSRB Rule G–8.

The MSRB proposes to revise MSRB Rule G–37(e)(i)(B)(2) to provide that, in disclosing the contribution amount made to a bond ballot campaign, the dealer also must include, in the case of in-kind contributions, the value and nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of, the bond ballot campaign. The proposed rule change also requires dealers to disclose the specific date on which such contributions to bond ballot campaigns were made.

The MSRB also proposes to revise MSRB Rule G–37(e)(i)(B) to require dealers to disclose the full issuer name and full issue description of any primary offering resulting from voter approval of a bond ballot measure to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68872 (February 8, 2013), 78 FR 10656 ("Notice").

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Robert W. Doty, President, AGFS and Senior Advisor, Government Financial Strategies, Inc., dated February 20, 2013 ("AGFS Letter") and Jeanine Rodgers Caruso, President, National Association of Independent Public Finance Advisors, dated March 12, 2013 ("NAIPFA Letter"). *See also*, Letters to Ronald W. Smith, Corporate Secretary, MSRB, from Ellen S. Miller, Co-Founder and Executive Director, The Sunlight Foundation, dated March 5, 2013 ("Sunlight Letter") and Kamala Harris, Attorney General, Department of Justice, from Bill Lockyer, Treasurer, State of California, dated March 18, 2013 ("AG Letter").

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Gary L. Goldsholle, General Counsel, MSRB, dated March 26, 2013.

which a contribution required to be disclosed has been made. All information is required to be reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot measure occurred. The proposed rule change also contains a look-back provision for bond ballot campaign contributions that are made by an MFP or a non-MFP executive officer during the two years prior to an individual becoming an MFP or a non-MFP executive officer of a dealer. The look-back provision limits the additional disclosures required under proposed MSRB Rule G–37(e)(i)(B) to those items that would have been required to be disclosed if such individual had been an MFP or a non-MFP executive officer at the time of the contribution. The proposed revisions to MSRB Rule G–37(e)(i)(B) also require dealers to disclose the reportable date of selection on which the dealer was selected to engage in municipal securities business. Furthermore, proposed revisions to MSRB Rule G–37(e)(i)(B) require dealers to disclose both the amount and source of any payments or reimbursements related to any bond ballot contribution received by a dealer or its MFPs from any third party.[6]

The MSRB also proposes to revise MSRB Rule G–37(g) to expand the definition of "contribution" and add a new defined term, the "reportable date of selection." The proposed amendments to the definition of "contribution" would distinguish between contributions made to an official of an issuer and contributions made to a bond ballot campaign. The term "reportable date of selection" would be defined to mean to the date of the earliest to occur of: (1) The execution of an engagement letter; (2) the execution of a bond purchase agreement; or (3) the receipt of formal notification (provided either in writing or orally) from or on behalf of the issuer that the dealer has been selected to engage in municipal securities business.

Lastly, the MSRB proposes conforming amendments to MSRB Rule G–8(a)(xvi)(H) and (I) to require dealers to maintain records of the supplemental information related to bond ballot campaign contributions that are required to be disclosed on Form G–37 under the proposed rule change.

III. Summary of Comments Received and the MSRB's Response

As previously noted, the Commission received four comment letters on the proposed rule change and a response from the MSRB.[7] Two commenters expressed general support for the proposed rule change.[8] One commenter found the proposed disclosure requirements to be inadequate.[9] One commenter addressed state law matters, which are not the subject of the proposed rule change.[10]

A. General Support to the Proposed Rule Change

One commenter noted that the proposed rule change is necessary in order to gather information for evaluation of potential further actions in response to circumstances suggesting corruption and unfair dealing in gaining employment and participating in municipal securities issuances approved by voters.[11] Another commenter stated that improving "public disclosure of bond ballot campaign contributions is fundamental to helping citizens be better informed about possible conflicts of interest and any "pay-to-play" schemes that might be occurring in the underwriting of bonds."[12]

B. Disclosure Requirements are Inadequate

One commenter also requested that the MSRB "further improve transparency and accountability by making municipal securities information available in an open, standardized format and by using non-proprietary unique identifiers."[13] In response, the MSRB stated that none of these requests were the subject of the proposed rule change but that the MSRB will keep these requests under advisement as it considers future enhancements to its political contribution transparency initiatives.

Another commenter stated that the proposed disclosure requirements are inadequate to curtail actual or perceived *quid pro quo* practices with respect to bond ballot campaign contributions.[14] Moreover, this commenter noted that the MSRB's First Amendment concerns are unwarranted in light of the Supreme Court's decision in *Citizens United* v. *FEC*.[15] This commenter suggested that additional steps beyond disclosure requirements are necessary to address the issue, either by way of a direct contribution ban, or an indirect expenditure limit.[16] "Contributions to bond ballot campaign committees are, in fact, direct in nature and, because of the evidence of actual or perceived *quid pro quo*, such contributions should be prohibited in order to prevent *quid pro quo* from continuing to occur."[17] If bond ballot campaign committee contributions are determined to be indirect expenditures, this commenter urged the Commission to place limits on such expenditures as a result of past and ongoing *quid pro quo*. This commenter also suggested that bond ballot campaign committee contributions be limited to $200 per election and be combined with a ban on business in the event such contributions exceed this amount. Furthermore, the commenter suggested that, if the above-referenced recommendations are not implemented, the proposed rule change should be amended to require disclosure of contributions contemporaneously or within a reasonable amount of time after the contribution is made. The commenter argued that the current proposed quarterly disclosure timetable is insufficient to curtail the actual or perceived *quid pro quo*, because "in all likelihood, an election will have concluded long before the disclosures are ever made, which will diminish whatever informative value such disclosures may have to the voting public."

In response, the MSRB noted it has previously acknowledged and responded to similar comments, including those received pursuant to a request for comment to the public,[18] which were specifically addressed in the Notice. In addition, the MSRB reiterated that approval of the proposed rule change does not foreclose additional rulemaking in the future.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as well as the comment letters received and the MSRB's response, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.[19] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent

[6] Third parties include issuers.

[7] *See supra* notes 4 and 5.

[8] *See* Sunlight Letter and AGFS Letter.

[9] *See* NAIPFA Letter.

[10] *See* AG Letter. Because the AG Letter relates to subject matters not directly relevant to the proposed rule change, the Commission does not address the comment herein.

[11] *See* AGFS Letter.

[12] *See* Sunlight Letter.

[13] *Id.*

[14] *See* NAIPFA Letter.

[15] 558 U.S. 310 (2010).

[16] *Id.*

[17] *Id.*

[18] *See* MSRB Notice 2012–43 (August 15, 2012).

[19] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[20]

The proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, because it is intended to protect investors and the public interest and prevent fraudulent and manipulative acts and practices by adding greater specificity to the public disclosures required for contributions made by covered parties to bond ballot campaigns and any municipal securities business awarded pursuant to such bond ballot measure. Market participants will have access to such public information in a centralized format on the MSRB's Web site through Form G–37, which will increase market transparency and strengthen market integrity of the municipal securities market. The information will help shed light on ongoing market concerns of pay-to-play practices with respect to bond ballot campaign contributions. The MSRB has also represented that the revisions to MSRB Rule G–37 will assist the MSRB in its continuing review of MSRB Rule G–37 and whether any additional disclosure requirements are desirable to address other practices that may present challenges to the integrity of the municipal securities market related to political contributions by dealers and dealer personnel. Furthermore, the MSRB has noted that approval of the proposed rule change does not foreclose additional rulemaking in the future. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, Section 15B(b)(2)(C) of the Act. The proposal will become effective no later than the start of the second calendar quarter following the date of this order.

[20] 15 U.S.C. 78*o*–4(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–MSRB–2013–01) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07711 Filed 4–2–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69255; File No. SR–NYSEMKT–2013–28]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Option Trading Rules To Extend the Operation of Its Pilot Program Regarding Minimum Value Sizes for Flexible Exchange Options Until March 31, 2014

March 28, 2013.

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 March 19, 2013, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its option trading rules to extend the operation of its pilot program ("Pilot Program") regarding minimum value sizes for flexible exchange options ("FLEX Options"), currently scheduled to expire on March 29, 2013, until March 31, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend its option trading rules to extend the operation of its Pilot Program regarding minimum value sizes for FLEX Options, currently scheduled to expire on March 29, 2013,[4] until March 31, 2014. This filing does not propose any substantive changes to the Pilot Program and contemplates that all other terms of FLEX Options will remain the same. Overall, the Exchange believes that extending the Pilot Program will benefit public customers and other market participants who will be able to use FLEX Options to manage risk for smaller portfolios.

In support of the proposed extension of the Pilot Program, and as required by the terms of the Pilot Program's implementation,[5] the Exchange has submitted to the Securities and Exchange Commission ("SEC" or "Commission") a Pilot Program Report that provides an analysis of the Pilot Program covering the period during which the Pilot Program has been in effect. This Pilot Program Report includes (i) data and analysis on the open interest and trading volume in (a) FLEX Equity Options that have opening transactions with a minimum size of 0 to 249 contracts and less than $1 million in underlying value; (b) FLEX Index Options that have opening transactions with a minimum opening size of less than $10 million in underlying equivalent value; and (ii) analysis on the types of investors that initiated opening FLEX Equity and Index Options transactions (*i.e.*, institutional, high net

[4] *See* Securities Exchange Act Release No. 66649 (March 23, 2012), 77 FR 19047 (March 29, 2012) (SR–NYSEAmex–2012–18).

[5] *See infra* note 6.

worth, or retail). The report has been submitted to the Commission.

The Exchange believes that there is sufficient investor interest and demand in the Pilot Program to warrant extension for another three months. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. The Exchange has not experienced any adverse market effects with respect to the Pilot Program.

If, in the future, the Exchange proposes an additional extension of the Pilot Program, or should the Exchange propose to make the Pilot Program permanent, the Exchange will submit, along with any filing proposing such amendments to the Pilot Program, an additional Pilot Program Report covering the period during which the Pilot Program was in effect and including the details referenced above, along with the nominal dollar value of the underlying security of each trade. The Pilot Program Report would be submitted to the Commission at least two months prior to the expiration date of the Pilot Program.

The Exchange notes that any positions established under this Pilot Program would not be impacted by the expiration of the Pilot Program. For example, a 10-contract FLEX Equity Option opening position that overlies less than $1 million in the underlying security and expires in January 2016 could be established during the Pilot Program. If the Pilot Program were not extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

The Exchange believes that the Pilot Program has been successful and well-received by its membership and the investing public for the period that it has been in operation as a Pilot Program.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed extension of the Pilot Program, which eliminates the minimum value size applicable to FLEX Options, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange notes that it has not experienced any adverse effects from the operation of the Pilot Program.

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. The proposed change is being made to extend the operation of the Pilot Program to allow additional time to enable the Exchange to file to permanently adopt the elimination of the minimum value size applicable to FLEX Options. Other competing options exchanges have similar programs to the Pilot Program. Thus, the proposed changes will not impose any burden on competition while providing that the elimination of the minimum value size applicable to FLEX Options continues without interruption until permanent approval is granted by the Commission.

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

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[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiving the 30-day operative delay would allow the Pilot Program to continue without interruption, and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Therefore, the Commission hereby waives the 30-day operative delay 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2013–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–28. This file number should be included on the subject line if email is used. To help the

[6] The Pilot Program was initiated on May 12, 2010. *See* Securities Exchange Act Release No. 62084 (May 12, 2010), 75 FR 28091 (May 19, 2010) (SR–NYSEAmex–2010–40).

[7] 15 U.S.C. 78f(b).

[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)(iii). 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[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).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–28 and should be submitted on or before April 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07724 Filed 4–2–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69254; File No. SR–CME–2012–34]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Withdrawal of Proposed Rule Change Related to the Liquidity Factor of CME's CDS Margin Methodology

March 28, 2013.

On December 10, 2012, Chicago Mercantile Exchange Inc. ("CME") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make adjustments to the liquidity risk factor component of its credit default swap ("CDS") margin model. The proposed rule change would permit CME to use an index portfolio's market risk rather than its gross notional as the basis for determining the margins associated with the liquidity risk factor of CME's CDS margin methodology. Notice of the proposed rule change was published in the **Federal Register** on December 31, 2012.[3] The Commission did not receive comments on the proposal.

On February 14, 2013, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to March 31, 2013.[4] On March 28, 2013, CME withdrew the proposed rule change (SR–CME–2012–34).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07713 Filed 4–2–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69250; File No. SR–NASDAQ–2013–055]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Deadline for Submission of Claims Under NASDAQ Rule 4626(b)(3)

March 28, 2013.

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 March 26, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify the deadline for submission of claims under NASDAQ Rule 4626(b)(3). The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 23, 2012, NASDAQ filed with the Commission a proposed rule change to amend NASDAQ Rule 4626 (Limitation of Liability) to establish a one-time, voluntary accommodation program for certain claims arising from the initial public offering ("IPO") of Facebook, Inc. ("FB") on May 18, 2012 (the "FB filing").[3] On March 22, 2013, the Commission approved the FB filing.[4] All claims under Rule 4626(b)(3), as adopted by the FB filing, must be submitted in writing not later than 7 days after formal approval of the FB filing by the Commission. The FB filing was approved on March 22, 2013, and therefore the current deadline for submission of claims is March 29, 2013. Because the week of March 25, 2013 contains both the Passover and Good Friday holidays, NASDAQ believes that the deadline should be extended. Accordingly, this proposed rule change would extend the deadline for submission of claims under the amended rule until 11:59 p.m. ET on April 8, 2013.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78*s*(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68529 (Dec. 21, 2012), 77 FR 77160 (Dec. 31, 2012).

[4] Securities Exchange Act Release No. 68929 (Feb. 14, 2013), 78 FR 12127 (Feb. 21, 2013).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78*s*(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67507 (July 26, 2012), 77 FR 45706 (August 1, 2012) (SR–NASDAQ–2012–090).

[4] *http://www.sec.gov/rules/sro/nasdaq/2013/34-69216.pdf.*

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, NASDAQ believes that the change will ensure that members' ability to submit claims under Rule 4626(b)(3) is not unduly affected by the occurrence of holidays immediately prior to the deadline for submission of such claims.

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. Specifically, NASDAQ does not believe that the proposal has any effect on competition, as it is designed merely to change the deadline established by a Commission-approved NASDAQ rule.

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)[7] of the Act and Rule 19b–4(f)(6)[8] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6)[9] under the Act normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii)[10] under the Act, the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change will become operative before March 29, 2013, the current deadline for the submission of claims. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will provide Exchange members additional time within which to submit claims under NASDAQ Rule 4626(b)(3) for certain claims arising from the initial public offering of FB.[11] Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change effective upon filing with the Commission.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] of the Act 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 email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–055 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–2013–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–NASDAQ–2013–055, and should be submitted on or before April 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07712 Filed 4–2–13; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69251; File No. SR–NYSEArca–2013–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Listing and Trading of Shares of the Cambria Shareholder Yield ETF Pursuant to NYSE Arca Equities Rule 8.600

March 28, 2013.

I. Introduction

On January 31, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Exchange Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares ("Shares") of the Cambria Shareholder Yield ETF ("Fund") under NYSE Arca Equities Rule 8.600. On February 13, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change was published for comment in the **Federal Register** on February 21, 2013.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares[6] on the Exchange. The Shares of the Fund will be offered by Cambria ETF Trust ("Trust"). The Trust will be registered with the Commission under the 1940 Act as an open-end management investment company.[7] Cambria Investment Management, L.P. will serve as the investment adviser to the Fund ("Adviser").[8] SEI Investments Distribution Co. ("Distributor") will be the principal underwriter and distributor of the Fund's Shares. SEI Investments Global Funds Services ("Administrator") will serve as administrator for the Fund. Brown Brothers Harriman & Co. will serve as the custodian and transfer agent for the Fund ("Custodian" and "Transfer Agent," respectively). The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[9] as provided by NYSE Arca Equities Rule 5.3.

The Fund seeks income and capital appreciation with an emphasis on income from investments in the U.S. equity market. The Fund will seek to achieve its investment objective by investing primarily in equity securities, including the common stock of U.S. companies, that exhibit strong cash flows, as reflected by their payment of dividends to shareholders and their return of capital to shareholders in other forms, such as through net stock buybacks, net debt paydown, mergers, acquisitions, and other forms of reinvestment in the business. The Fund may obtain a limited amount of foreign and emerging markets exposure through investments in depositary receipts, including American Depositary Receipts ("ADRs") and Global Depositary Receipts ("GDRs"). The Fund will not invest in non-U.S. equity securities other than through ADRs and GDRs. The Fund will not invest in options, futures, or swaps. The Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

Cambria will utilize a quantitative model to identify which securities the Fund might purchase and sell and opportune times for purchases and sales. While the Fund will invest in approximately 100 of the top equity securities as determined by their shareholder yield, the quantity of holdings in the Fund will be based on a number of factors, including the asset size of the Fund and the number of companies that satisfy the Adviser's quantitative measurements at any one time. The Fund's portfolio will be rebalanced to the Adviser's internal target allocations, developed pursuant to the Adviser's strategy described above, at least quarterly.

Additional information regarding the Fund; the Shares; the Fund's investment objective, strategies, methodology, and restrictions; the Adviser; the distributor; the administrator; the custodian; the transfer agent; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[10]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[12] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange: (1) made technical changes to the proposed rule change to clarify how the net asset value of the Cambria Shareholder Yield ETF would be calculated; and (2) stated that quotation and last-sale information for many securities held by the Cambria Shareholder Yield ETF would be available via the Consolidated Tape Association high speed line.

[5] *See* Securities Exchange Act Release No. 68930 (February 14, 2013), 78 FR 12110 ("Notice").

[6] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[7] On July 6, 2012, the Trust filed an amendment to the Trust's registration statement on Form N–1A under the Securities Act of 1933 ("1933 Act") (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–180879 and 811–22704) ("Registration Statement"). The Trust also filed an Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13959), dated November 13, 2012 ("Exemptive Application"). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30340 (January 4, 2013) ("Exemptive Order"). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Exemptive Application and the Exemptive Order. *See* Notice, *supra* note 5, 78 FR at 12110 n.7.

[8] The Exchange states that the Advisor is not affiliated with any broker-dealer and, in the event that (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 of 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 the portfolio. *See* Notice, *supra* note 5, 78 FR at 12111.

[9] 17 CFR 240.10A–3.

[10] *See supra* notes 5 and 7.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares and many securities held by the Fund will be available via the Consolidated Tape Association high-speed line, and the Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session through one or more major market data vendors.[13] The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) the prior business day's reported closing price, NAV, and mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),[14] 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.[15] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.[16] NYSE Arca expects that information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.[17]

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Fund will make available on its Web site on each business day before commencement of the Core Trading Session the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[18] The Commission notes that the Exchange will obtain a representation from the Fund 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.[19] In addition, the basket composition file will be publicly disseminated daily prior to the opening of the NYSE via NSCC. Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[20] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[21] Finally, the Exchange states that, on its behalf, the Financial Industry Regulatory Authority will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group or with which the Exchange has in place a comprehensive surveillance sharing agreement.[22]

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities.[23] In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continuing listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance 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.

(3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders ("ETP Holders") in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) 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; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) 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 (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[24] as provided by NYSE Arca Equities Rule 5.3.[25]

(6) The Fund will not invest in non-U.S. equity securities other than through ADRs and GDRs.

(7) The Fund will not invest in options, futures or swaps.

(8) The Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities.

(10) The Fund will not loan its securities if, as a result, the aggregate amount of all outstanding securities loans by the Fund exceeds 33 1/3% of its total assets (including the market value of collateral received).

(11) A minimum of 100,000 Shares for the Fund will be outstanding at the

[13] See Notice, *supra* note 5, 78 FR at 12114.

[14] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[15] See Notice, *supra* note 5, 78 FR at 12114.

[16] See *id.*

[17] See *id.*

[18] See *id.* Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day. See *id.*

[19] See *id.* at 12112.

[20] See NYSE Arca Equities Rule 8.600(d)(2)(D). Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities composing the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. See Notice, *supra* note 5, 78 FR at 12114.

[21] See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[22] See Notice, *supra* note 5, 78 FR at 12115.

[23] See *id.* at 12114.

[24] 17 CFR 240.10A–3.

[25] See Notice, *supra* note 5, 78 FR at 12112.

commencement of trading on the Exchange.

This order is based on the Exchange's representations.

For the forgoing reasons, the Commission believes the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[26] that the proposed rule change (SR–NYSEArca–2013–14), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07723 Filed 4–2–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69256; File No. SR–NYSEArca-2012–28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Response to Comments Submitted After the Issuance on December 14, 2012, of a Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment No. 1 To List and Trade Shares of the JPM XF Physical Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

March 28, 2013.

I. Introduction

On April 2, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the JPM XF Physical Copper Trust ("Trust") pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on April 20, 2012.[3]

On December 14, 2012, the Commission approved the proposed rule change,[4] finding that it was consistent with the requirements of the Act. In its Approval Order, the Commission invited interested persons to submit written data, views, and arguments concerning the Approval Order, including whether Amendment No. 1 to the proposed rule change is consistent with the Act.[5]

In response to the solicitation of comments, the Commission received two comment letters.[6] Both letters opposed the approval of the proposed rule change, and one commenter specifically requested that the Commission reconsider and reverse its decision, and disapprove the proposed rule change.[7] This Response addresses those comments.

II. Response to Comments

One commenter (referred to herein as "the commenter") repeated many concerns that had been previously raised, considered by the Commission, and expressly addressed in the Approval Order. This commenter, however, expanded upon and clarified some of his prior arguments.[8] Accordingly, the Commission responds below to certain comments made by the commenter after the Commission approved the proposed rule change.[9]

A. Direct Participation in Trading on the London Metal Exchange ("LME")

The commenter asserts that the Approval Order contained an incorrect statement of fact regarding who may trade directly on the LME. The commenter asserts that the Commission was incorrect in stating that "[o]nly eligible organizations or members are able to participate directly in trading on the LME," and asserts that only "open outcry" trading on the LME is limited to eligible organizations or members, and that most trading on the LME takes place in inter-office trading that is open to anyone who has a telephone and a computer screen.[10] The commenter further states that the Commission relied on this conclusion in reaching its decision.[11]

The Commission believes that the description in the Approval Order regarding trading on the LME is correct.[12] The Commission understands that trading on the LME can occur in a number of ways, all of which must occur through a member.[13] Trading can occur in the LME's open-outcry trading floor (the "Ring"), but such trading is limited to ring-dealing members.[14] Electronic trading can occur through LMEselect; although clients can access LMEselect, such access is available only via member systems or member-

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[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772 ("Notice").

[4] *See* Securities Exchange Act Release No. 68440, 77 FR 75468 (December 20, 2012) ("Approval Order"). Prior to approving the proposed rule change, the Commission: (1) Extended the time period for Commission action to July 19, 2012, *see* Securities Exchange Act Release No. 67075 (May 30, 2012), 77 FR 33258 (June 5, 2012); (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change, *see* Securities Exchange Act Release No. 67470 (July 19, 2012), 77 FR 43620 (July 25, 2012); and (3) issued a notice of designation of longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, *see* Securities Exchange Act Release No. 67965 (October 2, 2012), 77 FR 61457 (October 9, 2012).

[5] *See* Approval Order, *supra* note 4, 77 FR 75487.

[6] *See* letter from Robert B. Bernstein, Partner, Eaton & Van Winkle LLP ("EVW"), to Elizabeth M. Murphy, Secretary, Commission, dated January 9, 2013 ("EVW January 9 Letter"); and email from Janet Klein, dated January 7, 2013 ("Klein Email"). Comment letters are available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml*. Ms. Klein asserted that approval of the proposed rule change would: (1) Be "contrary to rational oversight of wise practice," without explaining the basis for her judgment; (2) not contribute to the economy; and (3) promote "speculative swings of a commodity price not related to supply/demand," again without explaining the basis for her conclusion. *See* Klein Email, *supra*. The Commission discussed the likelihood of any impact of the proposed rule change on the price of copper in the Approval Order. *See* Approval Order, *supra* note 4, 77 FR 75477–82.

[7] *See* EVW January 9 Letter, *supra* note 6. This commenter submitted seven comment letters opposing the proposed rule change prior to the Commission's issuance of the Approval Order. *See* letters from Vandenberg & Feliu, LLP ("V&F"), received May 9, 2012 ("V&F May 9 Letter"); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012; Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012 ("V&F August 24 Letter"); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012 ("V&F September 10 Letter"); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated October 23, 2012; Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2012; and Robert B. Bernstein, EVW, to Elizabeth M. Murphy, Secretary, Commission, dated December 7, 2012 ("EVW December 7 Letter").

[8] *See supra* note 7.

[9] The other comment is addressed *supra* at note 6.

[10] *See* EVW January 9 Letter, *supra* note 6, at 4–5 (quoting Approval Order, *supra* note 4, 77 FR 75469).

[11] *See* EVW January 9 Letter, *supra* note 6, at 5.

[12] The Approval Order expressly states that this description comes from the description of the copper market that the Exchange included in its filing. *See* Approval Order, *supra* note 4, 77 FR 75469. In the notice of the proposed rule change, the Exchange stated: "The LME is a principal-to-principal market where only eligible organizations or 'members' are able to participate directly in trading." Notice, *supra* note 3, 77 FR 23776. The commenter did not raise any concerns about the Exchange's description of the LME in any of the comment letters he previously submitted.

[13] *See* Approval Order, *supra* note 4, 77 FR 75469.

[14] *See* LME, Trading, Venues and Systems, The Ring, *http://lme.com/trading/venues-and-systems/ring/*.

sponsored Independent Software Vendor ("ISV") platforms.[15] Similarly, the LME's inter-office telephone market, which operates 24 hours a day, facilitates trading between LME members.[16] However, even assuming that direct trading on the LME were not limited to eligible organizations or members, such an assumption was not a basis for the Commission's findings.[17]

B. The Impact of Queues

In a comment submitted prior to issuance of the Approval Order, the commenter discussed the existing unloading queues for metals, including copper, at LME warehouses.[18] The commenter asserted that queues to unload copper from LME warehouses appear to be lengthening because owners of LME warehouses are "paying producers with surplus metal huge financial incentives to deposit their metal in LME warehouses, at which point such product may be sold, reportedly in some cases to owners of other LME warehouses, which is what is reportedly creating and perpetuating the ever-growing queue." [19] According to the commenter, the development of these queues "creates a scarcity of free units of metal that not only forces up premiums above LME cash prices in local geographic markets" but may ultimately prevent end-users of copper from obtaining access to needed copper in a timely fashion.[20]

In the Approval Order, the Commission addressed this comment. In concluding that the Trust's copper will remain available to consumers and other participants in the physical copper market, the Commission assumed, based on the record, that copper would be transferred to a redeeming authorized participant's book-entry account within three business days, and that a redeeming authorized participant taking delivery of copper from an LME warehouse would then have to wait in the queues just like other owners withdrawing metal from that warehouse.[21] The Commission stated its belief that waiting up to an extra three business days beyond the time required to take copper off of LME warrant is not a significant enough delay to consider the copper delivered from the Trust unavailable for immediate delivery, and noted that the commenter, who acknowledged that taking copper off of LME warrant takes time, considers copper on LME warrant to be available for immediate delivery.[22] In addition, the Commission pointed out that the Trust's copper may be held in both LME-approved warehouses and non-LME-approved warehouses, and there was nothing in the record concerning the existence of unloading queues in non-LME warehouses.[23] Further, the Commission stated that the LME appears to be attempting to address the problem of unloading queues.[24]

In the post-Approval Order comment letter, the commenter expands upon his prior comment about queues by asserting that "the placement of additional copper in LME warehouses may lead to substantially longer queues that will make it even more difficult for all consumer [sic] and other market participants to obtain physical copper that otherwise used to be available for immediate delivery." [25] The commenter also argues in his post-Approval Order letter that the longer queues that he predicts will occur, combined with the "huge costs of storage" that will be borne by anyone choosing to take physical delivery of copper, "may itself discourage the exercise of redemption rights." [26]

Several factors would impact how much copper will be deposited into each approved warehouse during the creation process, and how quickly. Authorized participants will determine where to deliver copper in exchange for Shares, choosing from among the eight permitted warehouse locations, which include LME and non-LME warehouses.[27] Authorized participants may determine to deliver copper to non-LME warehouses in exchange for Shares. As noted in the Approval Order, there is nothing in the record concerning the existence of unloading queues in non-LME warehouses.[28] Further, it is unknown how many Shares would be created (*i.e.*, how much copper would be deposited at permitted warehouse locations), and how quickly they would be created (*i.e.*, how quickly the copper would be deposited at the permitted warehouse locations).[29] Thus, based on the record, the Commission cannot conclude that the placement of additional copper in LME warehouses due to the creation of Shares would lead to longer queues.

With respect to redemptions, it is unknown how often Share redemptions will occur and whether they will be followed by physical delivery.[30] Redeeming authorized participants (or their customers) will determine whether to retain the warehouse receipt or request physical delivery of copper. Some authorized participants who redeem Shares may choose to hold the warehouse receipt rather than withdraw the copper from the warehouse.[31] Thus, based on the record, the Commission

[15] *See* LME, Trading, Venues and Systems, Electronic, *http://lme.com/trading/venues-and-systems/electronic/*. In the case of member systems, client traffic must pass through a member order-routing bridge and/or a pre-trade risk engine fully controlled by the sponsoring member's compliance team. Client traffic can also pass through an ISV pre-trade risk engine endorsed and controlled by the sponsoring member's compliance team.

[16] *See* LME, Trading, Venues and Systems, Telephone, *http://lme.com/trading/venues-and-systems/telephone/*.

[17] *See* Approval Order, *supra* note 4, 77 FR 75474–75 (discussing the availability of the Trust's copper); and *id.* at 75486–87 (discussing the Commission's findings).

[18] *See* EVW December 7 Letter, *supra* note 7.

[19] *See id.* at 2.

[20] *See id.*

[21] *See* Approval Order, *supra* note 4, 77 FR 75474 n.83.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] EVW January 9 Letter, *supra* note 6, at 13. According to the commenter, queue formation is a function of the demand to unload all metals stored in LME warehouses. *See* EVW December 7 Letter, *supra* note 7. Accordingly, even if Shares were created and redeemed in a manner that could exacerbate the existing queues, that activity could be offset entirely by fewer requests to take physical delivery of other metals stored in the warehouses.

[26] *See* EVW January 9 Letter, *supra* note 6, at 13.

[27] "The Trust will store its copper in both LME-approved warehouses and non-LME-approved warehouses * * *. Initially, the permitted warehouse locations will be in the Netherlands (Rotterdam), Singapore (Singapore), South Korea (Busan and Gwangyang), China (Shanghai), and the United States (Baltimore, Chicago, and New Orleans)." Approval Order, *supra* note 4, 77 FR 75471.

[28] *See id.* at 75474 n.83.

[29] *See id.* at 75476–77. The commenter states that queues would be exacerbated only to the extent that *additional* copper is deposited into LME warehouses. *See* EVW January 9 Letter, *supra* note 6, at 13. In a prior comment letter, the commenter stated that authorized participants would likely create Shares by taking copper off warrant at an LME warehouse and using that copper to create Shares without ever removing it from the LME warehouse (referred to as "white lining"). *See* V&F September 10 Letter, *supra* note 7, at 2. Even assuming that the commenter is correct that authorized participants will elect to create Shares through white lining, then no additional copper would be added to an LME warehouse's inventory. If the commenter is now asserting that copper will be delivered from another source, this supports the Commission's belief that it is more plausible that copper that is not on LME warrant would be used to create Shares. *See* Approval Order, *supra* note 4, 77 FR 75476.

[30] Additionally, when physical delivery is demanded after the redemption of Shares, for the reasons discussed above in the discussion of creations, it is unclear how often withdrawals would be from LME warehouses.

[31] As discussed in the Approval Order, copper received in exchange for redeemed Shares could be: (1) Sold in the over-the-counter ("OTC") market for cash; (2) swapped in the OTC market for copper in a different location or for a different brand; (3) placed on LME warrant and traded on the LME; or (4) removed from the warehouse and consumed. *See* Approval Order, *supra* note 4, 77 FR 75474. The commenter does not assert that the existence of queues would discourage authorized participants from redeeming Shares with the intent to sell or trade the copper, rather than take physical delivery.

cannot conclude that redemptions of Shares would lead to longer queues.

According to the commenter, anyone choosing to take physical delivery of copper following redemption will have to bear "huge storage costs." [32] The holders of Shares, however, also will pay storage costs indirectly through the Trust.[33] The commenter does not explain how storage costs, together with the longer queues that the commenter asserts would occur, would discourage redemption, because those who purchase Shares would have to pay storage costs, whether the Shares are redeemed or held.

For the reasons discussed above, and based on the record, the Commission cannot conclude that storage costs, together with "longer" queues that the commenter asserts would occur, would discourage the exercise of redemption rights.

C. Availability of Particular Copper Brands

In comments submitted prior to approval of the proposed rule change, the commenter expressed concern regarding the ability of end users to acquire copper of a preferred brand or in a preferred location.[34] The commenter asserted that end users would not acquire Shares and redeem them for physical copper because the copper they would receive in exchange for the Shares might be in a location far from, or might be of brands that are not acceptable to, their plants.[35]

The Commission addressed these comments in the Approval Order, stating that, regardless of the preferences of these consumers, authorized participants may redeem Shares for copper and the record does not contain any evidence that these or any other consumers of copper could not use the Shares to obtain copper through an authorized participant.[36] Further, the Commission stated that the record supports that the same logistical issues exist and are regularly addressed by end-users of copper holding LME warrants,[37] and that nothing in the record indicates that copper merchants will not be able to perform the same function in connection with copper delivered in connection with Share redemptions.[38]

In the post-Approval Order letter, the commenter augments his prior argument by asserting that the purchase and sale of physical copper held by the Trust will not operate in the same way as the trading of copper on LME warrants because copper held by the Trust will not be for sale until after Shares are redeemed. The commenter further argues that the only "copper that can conceivably be traded by merchants for desired brands is copper on warrant in LME warehouses." [39] Accordingly, the commenter concludes that if, as he predicts, only copper on LME warrant is used to create Shares (and is thereby taken off warrant and unavailable for sale), "there is a much greater likelihood of there not being copper of the desired brands in the desired locations available for copper merchants to trade." [40]

In the Approval Order, the Commission stated that, while the sources of copper used to create Shares are uncertain,[41] it believes it is more plausible that a sufficient portion of the estimated 1.4 million metric tons of liquid copper inventories not on LME warrant would be available to authorized participants to use to create Shares.[42] Further, as mentioned above, authorized participants will choose the location of copper used to create Shares,[43] which makes it difficult to predict the location(s) from which the Trust's copper will come. Moreover, there is no data in the record concerning the availability of particular brands of copper, much less the availability of particular brands in particular locations.[44] The commenter does not provide in his post-Approval Order letter any new evidence to suggest that this scenario of brand scarcity in particular locations is likely to occur as a result of Share creation. Therefore, the Commission does not believe that the record supports the commenter's argument that, as a result of the Trust, it is much more likely that brand-sensitive end-users of copper will not be able to obtain their desired brands of copper at their desired locations.

* * * * *

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07717 Filed 4–2–13; 8:45 am]

BILLING CODE 8011–01–P

[32] See EVW January 9 Letter, *supra* note 6, at 13.

[33] The Trust's expenses will include both the Sponsor's fee, including storage costs, and other expenses. Registration statement for the Trust, amended on July 12, 2011 (No. 333–170085), at 57 ("Registration Statement").

[34] See V&F September 10 Letter, *supra* note 7.

[35] See Approval Order, *supra* note 4, at 75474 (citations omitted).

[36] See *id.*

[37] See *id.*

[38] See *id.*

[39] See EVW January 9 Letter, *supra* note 6, at 17.

[40] See *id.*

[41] See Approval Order, *supra* note 4, 77 FR 75475.

[42] See *id.* at 75475–76.

[43] This may be informed by the locational premia in the various authorized warehouse locations, but "premia in different locations have fluctuated historically relative to one another and will continue to change over time * * *" and "a region with the highest locational premia at a given time may have the lowest locational premia at a later date." *Id.* at 75475.

[44] The commenter, however, did provide projections that production will increase through 2016 in amounts that also exceed—and in most years greatly exceed—the amount of copper that the commenter predicts the Trust will hold. See V&F August 24 Letter, *supra* note 7, at 2 (providing data indicating that global refined copper is projected to increase by 519,000 metric tons in 2012; 1,603,000 metric tons in 2013; 1,195,000 metric tons in 2014; 1,091,000 metric tons in 2015, and 375,000 metric tons in 2016). While this data does not support the proposition that particular brands of copper will be more widely available at particular locations in the future, it also does not support the commenter's contention that particular brands of copper will be more scarce at particular locations in the future.

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on Wednesday, April 24, and Thursday, April 25, 2013, to obtain views and advice on the topic of Trout Fish Hatchery projects in Tennessee and Georgia.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The meeting agenda includes the following:

1. Introductions
2. Presentation(s) concerning Trout Fish Hatchery projects in Tennessee and Georgia, the need for a sustainable business model for funding these programs, other agencies' work with fish hatcheries, and partnership efforts to sustain trout hatcheries
3. Public Comments
4. Council Discussion and Advice

The RRSC will hear opinions and views of citizens by providing a public comment session. The public comment session will be held at 9:30 a.m., CDT, on Thursday, April 25. Persons wishing to speak are requested to register at the door by 8:30 a.m. on Thursday, April 25 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–11 B, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday, April 24 from 8:00 a.m. to

noon and Thursday, April 25, from 8:00 a.m. to noon, CDT.

ADDRESSES: The meeting will be held at the Guntersville State Park Lodge, 1155 Lodge Drive, Guntersville, Alabama 35976–9126 and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Beth Keel, 400 West Summit Hill Drive, WT–11 B, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: March 29, 2013.

Joseph J. Hoagland,

Senior Vice President, Policy & Oversight, Tennessee Valley Authority.

[FR Doc. 2013–07695 Filed 4–2–13; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2011–0786]

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Primary, Cargo, and Nonprimary Entitlement Funds for Fiscal Year 2013

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 2013, as the deadline for each airport sponsor to notify the FAA whether or not it will use its fiscal year 2013 entitlement funds available under Section 47105(f) of Title 49, United States Code, to accomplish Airport Improvement Program (AIP)-eligible projects that the sponsor previously identified through the Airports Capital Improvement Plan (ACIP) process during the preceding year.

The sponsor's notification must address all entitlement funds apportioned for fiscal year 2013, as well as any funds unused from prior years. After Friday, July 26, 2013, the FAA will carry over all remaining entitlement funds, and the funds will not be available again until at least the beginning of fiscal year 2014. This notification requirement does not apply to non-primary airports covered by the block-grant program.

FOR FURTHER INFORMATION CONTACT: Mr. Frank J. San Martin, Manager, Airports Financial Assistance Division, APP–500, on (202) 267–3831.

SUPPLEMENTARY INFORMATION: Title 49 of the United States Code, section 47105(f), provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for its apportioned funds, also called entitlement funds. Therefore, the FAA is hereby notifying sponsors about steps required to ensure that the FAA has sufficient time to carry over and convert remaining entitlement funds, due to processes required under federal laws. This notice applies only to those airports that have had entitlement funds apportioned to them, except those nonprimary airports located in designated Block Grant States. Sponsors intending to apply for any of their available entitlement funds, including those unused from prior years, shall submit by 12:00 p.m. prevailing local time on Wednesday, May 1, 2013, a written indication to the designated Airports District Office (or Regional Office in regions without Airports District Offices) their intent to submit a grant application no later than close of business Friday, July 26, 2013, to use their fiscal year 2013 entitlement funds available under Title 49 of the United States Code, section 47105(f). This notice must address all entitlement funds apportioned for fiscal year 2013 including those unused from prior years. By Friday, June 28, 2013, airport sponsors that have not yet submitted a final application to the FAA, should notify the FAA of any issues with meeting the final application deadline of July 26, 2013. Absent notification by the May 1st deadline and/or subsequent notification of any issues by the June 28th deadline, the FAA will proceed after Friday, July 26, 2013 to take action to carry over all remaining entitlement funds without further notice, and the funds will not be available again until at least the beginning of fiscal year 2014.

This notice is promulgated to expedite and prioritize the grant-making process.

The AIP grant program is operating under the requirements of Public Law 112—91, the "FAA Modernization and Reform Act of 2012," enacted on February 14, 2012, which authorizes the FAA through September 30, 2015 and the "Consolidated and Further Continuing Appropriations Act, 2013" which appropriates FY 2013 funds for the AIP.

Issued in Washington, DC, on March 28, 2013.

Elliott Black,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 2013–07714 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

33rd Meeting: RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services

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

ACTION: Meeting Notice of RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

SUMMARY: The FAA is issuing this notice to advise the public of the thirty-first meeting of the RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

DATES: The meeting will be held April 29–May 3, 8:30 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at NCAR, 3080 Center Green Drive, Boulder, CO 80301.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 206. The agenda will include the following:

April 29–May 3

- Introduction and opening remarks
- Review and approve meeting agenda
- Approval of previous meeting minutes
- Action item review
- PMC update (TOR & ISRA process changes)
- NCAR Overview—Tenny Lindholm
- Industry coordination
- Sub-Groups status and week's plan
- Other Business
- Sub-Groups meetings Break out, as necessary daily
- EDR Turbulence Standards Project Briefing from FAA SE2020 Team
- SG6 WG1 Architecture and MASPS presentations
- SG3 AIS and MET Services Delivery Architecture Recommendations Document Review (FRAC release approval).
- Closing Plenary—Sub-Groups reports
- Action item review
- Future meeting plans and dates
- Other business

• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 28, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–07716 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Fourth Meeting: RTCA Special Committee 203, Unmanned Aircraft Systems

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

ACTION: Meeting Notice of RTCA Special Committee 203, Unmanned Aircraft Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twenty third meeting of RTCA Special Committee 203, Unmanned Aircraft Systems.

DATES: The meeting will be held May 1–3, 2013, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th St. NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 203. The agenda will include the following:

May 1–3, 2013

Opening Plenary Session

• Introductory Remarks and Introductions
• Review Meeting Agenda
• Review/Approval of Twenty Third Plenary Meeting Summary
• Leadership Update
• Workgroup Progress
• Review/Approval—New Document—Operational Functional Requirements and Safety Objectives for Unmanned Aircraft Systems and Minimum Aviation System Performance Standards
• Other Business
• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 28, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–07719 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Boulder Municipal Airport, Boulder, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Boulder Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before May 3, 2013.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. John P. Bauer, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tim Head, Manager, Boulder Municipal Airport, Boulder, Colorado, at the following address: Mr. Tim Head, Manager, Boulder Municipal Airport, 3300 Airport Road, Box K, Boulder, Colorado 80301.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Miller, Colorado Engineer/Compliance Specialist, Federal Aviation Administration, Northwest Mountain Region, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Boulder Municipal Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

The FAA Modernization and Reform Act of 2012, HR 658, Section 817, gave the Secretary of Transportation the authorization to grant an airport, city, or county release from any of the terms, conditions, reservations, or restrictions contained in a deed under which the United States conveyed to the airport, city, or county an interest in real property for airport purposes pursuant to Section 16 of the Federal Airport Act (60 Stat. 179) or Section 23 of the Airport and Airway Development Act of 1970 (84 Stat. 232).

On March 18, 2013, the FAA determined that the request to release property at the Boulder Municipal Airport submitted by the City of Boulder meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than May 3, 2013.

The following is a brief overview of the request:

The City of Boulder is proposing the release from the terms, conditions, reservations, and restrictions on a 2.6 acre parcel of property acquired by the City of Boulder on August 8, 1958. No FAA funds were used in its purchase and no improvements have been conducted on the parcel using FAA funds. This parcel has since been identified on the Airport Layout Plan for future release as it is not conducive to construction of improvements related to the airport due to its sloping terrain and small, narrow configuration. All proceeds from the sale of this parcel will be at fair market value, and will remain in the airport fund and will provide the airport with matching funds for FAA and state grants, in addition to improving airside infrastructure. The City will ensure that the property carries an avigation easement if sold and that no hazard will be created. As airport land, this parcel was originally zoned as "Public". In preparation for release, this parcel was given a new zoning of "Light

Industrial", which is the closest equivalent to its "Public" previous zoned designation; thus, its potential use remains generally unchanged.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at the Boulder Municipal Airport.

Issued in Denver, Colorado, on March 19, 2013.

John P. Bauer,

Manager, Denver Airports District Office.

[FR Doc. 2013–07663 Filed 4–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Sikorsky Memorial Airport, in Bridgeport, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(d), notice is being given that the FAA is considering a request from Sikorsky Memorial Airport, in Bridgeport, CT to waive the surplus property requirements for approximately 11 acres of airport property located at Sikorsky Memorial Airport, in Bridgeport, CT. The subject parcels have been used for non-aeronautical purposes for over 25 years under temporary, partial release of surplus property requirements. It has been determined through study and master planning that the subject parcels will not be needed for aeronautical purposes, rather the proceeds of the sale will be used as the sponsors share of needed safety area improvement projects. Full and permanent relief of the surplus property requirements on this specific parcel will allow the airport to make the necessary aviation-safety improvements on the airfield.

DATES: Comments must be received on or before May 3, 2013.

ADDRESSES: Send comments on this document to Mr. Barry J. Hammer at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7625.

FOR FURTHER INFORMATION CONTACT: Documents are available for review by appointment by contacting Mr. John Ricci, Telephone 203–576–8166 or by contacting Mr. Barry J. Hammer, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7625.

Issued in Burlington, Massachusetts, on March 20, 2013.

Bryon Rakoff,

Acting Manager, Airports Division, New England Region.

[FR Doc. 2013–07660 Filed 4–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement (EIS): Hancock County, Mississippi

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent to prepare an EIS.

SUMMARY: This notice rescinds the Notice of Intent for preparing an Environmental Impact Statement (EIS) for a proposed highway in Hancock County, Mississippi. The project study area extended a distance of approximately six (6) miles from Interstate 10 to the intersection of State Routes 43 and 603 in the vicinity of Kiln Mississippi. The original Notice of Intent for this EIS process was published in the **Federal Register** on August 26, 2011.

FOR FURTHER INFORMATION CONTACT: Claiborne Barnwell, Project Development Team Leader, Federal Highway Administration, Mississippi Division, 100 West Capitol Street, Suite 1062, Jackson, Mississippi 39269, Telephone: (601) 965–4217 (email: *claiborne.barnwell@dot.gov*).

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) in cooperation with the Mississippi Department of Transportation (MDOT) initiated an Environmental Impact Statement (EIS) with a Notice of Intent August 26, 2011, to provide a connector road between Interstate 10 and the intersection of State Routes 43 and 603 just north of Kiln, Mississippi, a distance of approximately 6-miles.

Due to funding constraints the Notice of Intent is rescinded.

Andrew H. Hughes,

Division Administrator, Mississippi, Federal Highway Administration, Jackson, Mississippi.

[FR Doc. 2013–07675 Filed 4–2–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Availability of an Environmental Assessment for the Proposed Hudson Yards Concrete Casing Project in New York, New York

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (USDOT).

ACTION: Notice of Availability of Environmental Assessment for the Hudson Yards Concrete Casing Construction.

SUMMARY: This notice advises the public that the National Railroad Passenger Corporation (Amtrak) has prepared an Environmental Assessment (EA) in coordination with Federal Railroad Administration (FRA) for the construction of an underground concrete casing to preserve a right-of-way (ROW) (the proposed Project) for the future expansion of rail service between New Jersey and New York and to support Amtrak's efforts to improve the resiliency of the rail system in the Northeast Corridor (NEC) to address future disasters. Amtrak anticipates constructing the proposed Project using Federal funding and, as the proposed Project sponsor, would design and construct the underground concrete casing. In accordance with the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations to implement NEPA, the FRA's "Procedures for Considering Environmental Impacts", the EA examines the potential environmental impacts of constructing an underground concrete casing in the Hudson Yards rail yard in New York, NY (Hudson Yards).

FOR FURTHER INFORMATION CONTACT: Please submit written comments on the EA to Michelle W. Fishburne, USDOT, Federal Railroad Administration, Office of Railroad Policy and Development, 1200 New Jersey Avenue SE., W36–428, Washington, DC 20590 or via email at *michelle.fishburne@dot.gov.*

DATES: Written comments on the EA will be accepted on or before April 29, 2013.

ADDRESSES: The EA is available for review at the FRA Office of Railroad Policy and Development at the address listed above and locally at the New York Public Library, Fifth Avenue at 42nd Street, New York, NY10018–2788; Phone (212) 275–6975. The EA is also available for review on the FRA Web site at *http://www.fra.dot.gov/Page/P0214* .

SUPPLEMENTARY INFORMATION: Amtrak proposes to construct an underground concrete casing to preserve a ROW underneath Hudson Yards for the future expansion of rail service between New Jersey and New York and to support Amtrak's efforts to improve the resiliency of the rail system to address future disasters in the NEC.

Construction of the Project is proposed at this time because a real estate development corporation (Developer), through an agreement with the Metropolitan Transportation Authority (MTA) and the Long Island Railroad (LIRR), has begun constructing a development in the area above Hudson Yards (referred to as the Overbuild Project). The Developer has all necessary local and state approvals for the Overbuild Project and started construction in the southern portion of Hudson Yards, south of the proposed Project site, in December 2012. Amtrak proposes to construct the underground concrete casing in conjunction with the Overbuild Project in order to preserve an underground ROW as a viable location for a future tunnel into New York's Penn Station. If the Developer builds the immense foundations and platform for the Overbuild Project, the ROW underneath the Overbuild Project would be permanently lost as an alignment for a new tunnel entering Penn Station from the west.

In accordance with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, (NEPA), the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), and FRA's "Procedures for Considering Environmental Impacts," 64 FR 28545 (May 26, 1999) and 78 FR 2713 (Jan. 14, 2013), (FRA's Environmental Procedures), Amtrak prepared the EA in coordination with FRA, MTA and LIRR and analyzed the potential environmental impacts of the two alternatives for the proposed Project: "No Action" and "Construct a Concrete Casing."

FRA is publishing this notice to solicit public comments prior to making a final NEPA determination on the proposed Project. The review period for the EA shall extend to May 1, 2013. FRA will review the comments in accordance with NEPA, CEQ regulations, and FRA's Environmental Procedures. If FRA determines the proposed Project will not have any foreseeable significant environmental impacts, FRA will issue a Finding of No Significant Impact (FONSI) describing the agency's decision and the basis for it. Any FONSI issued by FRA will be consistent with 40 CFR 1508.13 and section 11 of FRA's Environmental Procedures (64 FR at 28551).

Issued in Washington, DC, on March 28, 2013.

Corey Hill,

Director, Office of Passenger and Freight Programs.

[FR Doc. 2013–07661 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0040]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LIEBESTRAUM; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0040. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LIEBESTRAUM is:

Intended Commercial Use of Vessel: Coastwise charters, 6 passengers or fewer

Geographic Region: "New York".

The complete application is given in DOT docket MARAD–2013–0040 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 28, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–07715 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0039]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEA GEANIE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0039. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA GEANIE is:

Intended Commercial Use Of Vessel: "Fishing charters".

Geographic Region: "Maryland, Delaware, New Jersey, Virginia, North Carolina, South Carolina, Georgia, Florida" The complete application is given in DOT docket MARAD–2013–0039 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 28, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–07721 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0038]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GOING GALT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0038. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GOING GALT is:

Intended Commercial Use of Vessel: "Excursions and daily or weekly charters".

Geographic Region: "Florida".

The complete application is given in DOT docket MARAD–2013–0038 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 28, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–07720 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0037]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BASIC INSTINCT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 3, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0037. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BASIC INSTINCT is:

Intended Commercial Use Of Vessel: Charters for day excursions.

Geographic Region: "California".

The complete application is given in DOT docket MARAD–2013–0037 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 28, 2013.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–07722 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2013–0044]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes an existing collection of information for an existing regulation for the aftermarket modification of vehicles to accommodate people with disabilities, for which NHTSA intends to seek renewed OMB approval.

DATES: Comments must be received on or before June 3, 2013.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice, and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. Telephone: 1–800–647–2251.
- *Instructions:* All submissions must include the docket number for this document. Please identify the collection of information for which a comment is provided by referencing the OMB Control Number, 2127–0635. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by tile name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Gayle Dalrymple, NHTSA, 1200 New Jersey Avenue SE., Room W45–333, NVS–123, Washington, DC 20590. Ms. Dalrymple's telephone number is (202) 366–5559.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Exemption for the Make Inoperative Prohibition.

OMB Control Number: 2127–0635.

Form Number: This collection of information uses no standard form.

Type of Request: Extension of a currently approved collection of information.

Abstract: On February 27, 2001, NHTSA published a final rule (66 FR12638) to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them as passengers. In that final rule, the agency issued a limited exemption from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment or features so as to adversely affect their performance. The exemption is limited in that it allows repair businesses to modify only certain types of Federally-required safety equipment and features, under specified circumstances. The regulation is found at 49 CFR Part 595 Subpart C, "Vehicle Modifications to Accommodate People with Disabilities."

This final rule included two new "collections of information," as that term is defined in 5 CFR Part 1320 "Controlling Paperwork Burdens on the Public": Modifier identification and a document to be provided to the owner of the modified vehicle stating the exemptions used for that vehicle and any reduction in load carrying capacity of the vehicle of more than 100 kg (220 lbs).

Modifiers who take advantage of the exemption created by this rule are required to furnish NHTSA with a written document providing the modifier's name, address, and telephone number, and a statement that the modifier is availing itself of the exemption. The rule requires:

"S595.6 Modifier Identification.

(a) Any motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7 shall furnish the information specified in paragraphs (a)(1) through (3) of this section to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.[1]

(1) Full individual, partnership, or corporate name of the motor vehicle repair business.

(2) Residence address of the motor vehicle repair business and State of incorporation if applicable.

(3) A statement that the motor vehicle repair business modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7.

(b) Each motor vehicle repair business required to submit information under paragraph (a) of this section shall submit the information not later than August 27, 2001. After that date, each motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7 shall submit the information required under paragraph (a) not later than 30 days after it first modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle. Each motor vehicle repair business who has submitted required information shall keep its entry current, accurate and complete by submitting revised information not later than 30 days after the relevant changes in the business occur."

This requirement is a one-time submission unless changes are made to the business as described in paragraph (b). NHTSA estimates that there are currently 700 businesses making modifications to motor vehicles to accommodate persons with disabilities. Of those 700, we estimate 85 percent will need to use the exemptions provided by 49 CFR 595.7 (595 businesses). The initial registration of modifiers wishing to use the exemptions occurred in 2001. Based on letters received since then, we estimate that 90 businesses currently modifying vehicles will need to change their information or new registrants will elect to use the exemptions annually. We estimate the burden of new or changed registrations from 90 businesses each year of: 90 businesses × 10 minutes/business = 15 hours.

We estimate the material cost associated with each submission to be 56 cents per responding business, or $50.04 nationwide annually.

Burden means the total time, effort, or financial resources expended by a person to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

We seek comment on:

1. Is our estimate of 700 businesses engaged in vehicle modification to accommodate people with disabilities correct?

2. Are we correct in assuming that a maximum of 85 percent of those 700 businesses, or 595 businesses, will need to use the exemptions provided by 49 CFR 595.7?

3. Are our estimates of the burden hours and material cost of compliance with 49 CFR 595.6 reasonable?

Modifiers who avail themselves of the exemptions in 49 CFR 595.7 are required to keep a record, for each applicable vehicle, listing which standards, or portions thereof, no longer

[1] The address of NHTSA has changed since 2001 and is now 1200 New Jersey Ave. SE., Washington, DC 20590.

comply with the Federal motor vehicle safety standards and to provide a copy to the owner of the vehicle modified (see 49 CFR 595.7 (b) and (e) as published in the final rule).

We estimate that:

1. There are approximately 4013 vehicles modified for persons with disabilities per year by 700 businesses;[2]

2. If 85 percent of the 700 businesses use the exemptions provided by 49 CFR 595.7, those 595 businesses will modify 3411 vehicles annually; and

3. The burden for producing the record required by 49 CFR 595.7 in accordance with paragraph (e) for those vehicles will be 1137 hours per year nationwide.

In the final rule we anticipated that the least costly way for a repair business to comply with this portion of the new rule would be to annotate the vehicle modification invoice as to the exemption, if any, involved with each item on the invoice. The cost of preparing the invoice is not a portion of our burden calculation, as that preparation would be done in the normal course of business. The time needed to annotate the invoice, we estimate, is 20 minutes. Therefore, the burden hours for a full year are calculated as: 3411 vehicles × 20 minutes/vehicle = 1137 hours.

This burden includes the calculation required by 49 CFR 595.7(e), but not the gathering of the information required for the calculation. That information would be gathered in the normal course of the vehicle modification. The only extra burden required by the rule is the calculation of the reduction in loading carrying capacity and conveying this information to the vehicle owner. Again, we are assuming that annotation on the invoice is the least burdensome way to accomplish this customer notification.

There will be no additional material cost associated with compliance with this requirement since no additional materials need be used above those used to prepare the invoice in the normal course of business. We are assuming it is normal and customary in the course of vehicle modification business to prepare an invoice, to provide a copy of the invoice to the vehicle owner, and to keep a copy of the invoice for five years after the vehicle is delivered to the owner in finished form.

We seek comment on whether our assumptions about the following are reasonable:

1. The document required by 49 CFR595.7(b) and specified in paragraph (e) will need to be prepared for approximately 3411 vehicles modified nationwide per year,

2. Annotation of each vehicle modification invoice as to which exemptions were used will take an average of 20 minutes, and

3. It is normal in the course of vehicle modification business to prepare an invoice, to provide a copy of the invoice to the vehicle owner, and to keep a copy of the invoice for five years after the vehicle is delivered to the owner in finished form.

Affected Public: Business or other for profit.

Estimated Annual Burden: 1152 hours, and $50.04

Estimated Number of Respondents: 595.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: March 28, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–07762 Filed 4–2–13; 8:45 am]

BILLING CODE 4910–59–P

[2] The agency does not require modifiers to submit information to us for every vehicle that is modified. Therefore, we have no exact count of the number of modifications made each year.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–9 (superseded by RP 2005–60 [superseded by 2007–40]), Form 940 e-file Program; Form 970, Application To Use LIFO Inventory Method; LR–209–76 (TD 7941), Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A (Section 301.6324A–1); Form 8821, Tax Information Authorization; and Form 8879–EO, IRS e-file Signature Authorization for an Exempt Organization.

DATES: Written comments should be received on or before June 3, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

(1) *Title:* Form 940 e-file Program.

OMB Number: 1545–1710.

Form Number: Revenue Procedure 2007–40 (formerly Revenue Procedure 2001–9).

Abstract: Revenue Procedure 2007–40 provides guidance and the requirements for participating in the Form 940 e-file Program.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,325,100.

Estimated Time per Respondent: 32 minutes.

Estimated Annual Burden Hours for Respondents: 715,554.

(2) *Title:* Application To Use LIFO Inventory Method.

OMB Number: 1545–0042.

Form Number: Form 970.

Abstract: Form 970 is filed by individuals, partnerships, trusts, estates,

or corporations to elect to use the last-in first-out (LIFO) inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individual or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 21 hours, 6 minutes.

Estimated Total Annual Reporting Burden hours: 42,220.

(3) *Title:* Special Lien for Estate Taxes Deferred Under Section 6166 or 6166A.

OMB Number: 1545–0757.

Form Number: TD 7941.

Abstract: Internal Revenue Code section 6324A permits the executor of a decedent's estate to elect a lien on section 6166 property in favor of the United States in lieu of a bond or personal liability if an election under section 6166 was made and the executor files an agreement under section 6324A(c). This regulation clarifies the procedures for complying with the statutory requirements.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 34,600.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 8,650.

(4) *Title:* Tax Information Authorization.

OMB Number: 1545–1165.

Form Number: 8821.

Abstract: Form 8821 is used to appoint someone to receive or inspect certain tax information. The information on the form is used to identify appointees and to ensure that confidential tax information is not divulged to unauthorized persons.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not for profit institutions, and farms.

Estimated Number of Respondents: 133,333.

Estimated Average Time per Respondent: 1 hour 3 minutes.

Estimated Total Annual Burden Hours: 140,300.

(5) *Title:* IRS e-file Signature Authorization for an Exempt Organization.

OMB Number: 1545–1878.

Form Number: 8879–EO.

Abstract: Form 8879–EO authorizes an officer of an exempt organization and electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign an organization's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 94,603.

Estimated Time per Respondent: 4 hours 29 minutes.

Estimated Total Annual Burden Hours: 425,714.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–07670 Filed 4–2–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection tools.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879–PE, IRS e-file Signature Authorization for Form 1065; Revenue Procedure 2009–32, Reliance Criteria for Private Foundations and Sponsoring Organizations; Form 14116, HCTC Family Member Eligibility Form; the VITA/TCE Volunteer Program; and PS–66–93 (TD 8609), Gasohol; Compressed Natural Gas, and PS–120–90 (TD 8241), Gasoline Excise Tax.

DATES: Written comments should be received on or before June 3, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–3634, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

(1) *Title:* IRS e-file Signature Authorization for Form 1065.

OMB Number: 1545–2042.

Form Number: 8879–PE.

Abstract: Form 8879–PE is used by an electronic return originator (ERO) and a general partner or limited liability company member when the general partner or limited liability company member wants to use a personal identification number (PIN) to electronically sign a partnership's electronic income tax return.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 hours, 3 minutes.

Estimated Annual Burden Hours for Respondents: 2,025.

(2) *Title:* Reliance Criteria for Private Foundations and Sponsoring Organizations.

OMB Number: 1545–2050.

Form Number: Notice 2006–107 (superseded in part by RP 2009–32[superseded by RP2011–32]).

Abstract: Revenue Procedure 2009–32 provides reliance criteria for private foundations and sponsoring organizations that maintain donor advised funds in determining whether a potential grantee is an organization described in section 509(a)(1), (2) or (3) of the Internal Revenue Code (Code).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 65,000.

Estimated Time Per Respondent: 9 hours, 25 minutes.

Estimated Total Annual Reporting Burden hours: 612,294.

(3) *Title:* HCTC Family Member Eligibility Form.

OMB Number: 1545–2163.

Form Number: 14116.

Abstract: This form will be used by the family members of HCTC eligible individuals under circumstances where the original candidate has died or become divorced from the family member. This form allows family member to begin the HCTC registration process by verifying the family member's eligibility.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 30.

(4) *Title:* VITA/TCE Volunteer Program.

OMB Number: 1545–2222.

Form Number: Various forms.

Abstract: The Internal Revenue Service offers free assistance with tax return preparation and tax counseling using specially trained volunteers. The Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs assist seniors and individuals with low to moderate incomes, those with disabilities, and those for whom English is a second language.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 47,130.

Estimated Average Time Per Respondent: 21 minutes.

Estimate Total Annual Burden Hours: 16,097.

(5) *Title:* PS–66–93, Gasohol; Compressed Natural Gas; and PS–120–90, Gasoline Excise Tax.

OMB Number: 1545–1270.

Form Number: N/A.

Abstract: PS–66–93: This regulation relates to gasohol blending and the tax on compressed natural gas (CNG). The sections relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The sections relating to CMG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat. PS–120–90: This regulation relates to the federal excise tax on gasoline. It affects refiners, importers, and distributors of gasoline and provides guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions, Farms and State, Local or Tribal Governments.

Estimated Number of Respondents: 3,410.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 366.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–07672 Filed 4–2–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2013

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factors and reference prices for calendar year 2013 as required by section 45(e)(2)(A) of the Internal Revenue Code (26 U.S.C. 45(e)(2)(A)), section 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)), and section 45(e)(10)(C) (26 U.S.C. 45(e)(10)(C)).

SUMMARY: The 2013 inflation adjustment factors and reference prices are used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under section 45.

DATES: The 2013 inflation adjustment factors and reference prices apply to calendar year 2013 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2013 sales of refined coal and Indian coal produced in the United States or a possession thereof.

Inflation Adjustment Factors: The inflation adjustment factor for calendar year 2013 for qualified energy resources and refined coal is 1.5063. The inflation adjustment factor for Indian coal is 1.1538.

Reference Prices: The reference price for calendar year 2013 for facilities producing electricity from wind is 4.53 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $58.23 per ton for calendar year 2013. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy have not been determined for calendar year 2013.

Because the 2013 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2013. Because the 2013 reference price of fuel used as feedstock for refined coal ($58.23) does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2013. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2013.

Credit Amount by Qualified Energy Resource and Facility, Refined Coal, and Indian Coal: As required by section 45(b)(2), the 1.5-cent amount in section 45(a)(1), the 8-cent amount in section 45(b)(1), the $4.375 amount in section 45(e)(8)(A), and the $2.00 amount in section 45(e)(8)(D) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2013 under section 45(a) is 2.3 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.1 cents per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2013 under section 45(e)(8)(A) is $6.590 per ton on the sale of qualified refined coal. The credit for Indian coal production for calendar year 2013 under section 45(e)(10)(B) is $2.308 per ton on the sale of Indian coal.

FOR FURTHER INFORMATION CONTACT: Martha Garcia, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 622–3110 (not a toll-free number).

Cornelia Schnyder,

Special Counsel to the Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. 2013–07773 Filed 4–1–13; 11:15 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 2, 7, et al.

Changes to Representation of Others Before the United States Patent and Trademark Office; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, 7, 10, 11 and 41

[Docket No. PTO–C–2012–0034]

RIN 0651–AC81

Changes to Representation of Others Before The United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) is adopting the new USPTO Rules of Professional Conduct (USPTO Rules), which are based on the American Bar Association's (ABA) Model Rules of Professional Conduct (ABA Model Rules), which were published in 1983, substantially revised in 2003 and updated through 2012. The Office has also revised the existing procedural rules governing disciplinary investigations and proceedings. These changes will enable the Office to better protect the public while also providing practitioners with substantially uniform disciplinary rules across multiple jurisdictions.

DATES: *Effective Date:* May 3, 2013.

FOR FURTHER INFORMATION CONTACT: William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, by telephone at 571–272–4097.

SUPPLEMENTARY INFORMATION:

Executive Summary

Pursuant to 35 U.S.C. 2(b)(2)(D), the Office governs "the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office." The Office also has the authority to suspend or exclude from practice before the Office any practitioner who is "shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D) of this title." 35 U.S.C. 32. Pursuant to the authority provided in sections 2(b)(2)(D) and 32 of Title 35, practitioners representing parties in patent, trademark, and other non-patent matters presently are required to conform to the Patent and Trademark Office Code of Professional Responsibility (USPTO Code) set forth in 37 CFR 10.20 through 10.112. These rules have been in place since 1985 and are based on the ABA Model Code of Professional Responsibility. *See* 50 FR 5158 (Feb. 6, 1985). Since that time, the vast majority of State bars in the United States have adopted substantive disciplinary rules based on the newer ABA Model Rules. As noted below, the Office believes individuals representing others before the Office will benefit from modernization of the regulations governing professional conduct before the Office and harmonization of these regulations with corresponding rules adopted by bars in the States and the District of Columbia.

On October 18, 2012, the Office published *Changes to the Representation of Others Before the United States Patent and Trademark Office*, a Notice of Proposed Rulemaking in the **Federal Register** (77 FR 64190) proposing the new USPTO Rules. The changes from the existing USPTO Code are intended to bring standards of ethical practice before the Office into closer conformity with the professional responsibility rules adopted by nearly all States and the District of Columbia, while addressing circumstances particular to practice before the Office. By adopting professional conduct rules consistent with the ABA Model Rules and the professional responsibility rules of 50 U.S. jurisdictions, the USPTO is providing attorneys with consistent professional conduct standards, and large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules. At this time, approximately 41,000 individuals are registered practitioners, of whom at least 75% are attorneys. The registered patent attorneys have offices located in all fifty States, the District of Columbia, and more than forty foreign countries. In addition to registered patent attorneys, any attorney who is a member in good standing of the bar of the highest court of a State, territory or possession of the United States is eligible to practice before the Office in trademark and other non-patent matters, without becoming a registered practitioner. 5 U.S.C. 500(b); 37 CFR 11.14. Attorneys who appear before the Office in non-patent matters are subject to these rules as well. 37 CFR 11.19.

A body of precedent specific to practice before the USPTO will develop as disciplinary matters brought under the USPTO Rules progress through the USPTO and the federal courts. In the absence of USPTO-specific precedent, practitioners may refer to various sources for useful information. For example, precedent based on the USPTO Code will assist interpretation of professional conduct standards under the USPTO Rules. The USPTO Rules fundamentally carry forward the existing and familiar requirements of the USPTO Code. A practitioner also may refer to the Comments and Annotations to the ABA Model Rules, as amended through August 2012, for useful information as to how to interpret the equivalent USPTO Rules. Additionally, relevant information may be provided by opinions issued by State bars and disciplinary decisions based on similar professional conduct rules in the States. Such decisions and opinions are not binding precedent relative to USPTO Rules, but may provide useful tools in interpreting the Rules while a larger body of USPTO-specific precedent is established.

This rulemaking benefits and reduces costs for most practitioners by clarifying and streamlining their professional responsibility obligations. The USPTO is adopting professional conduct rules consistent with the ABA Model Rules and the professional responsibility rules already followed by 50 U.S. jurisdictions, *i.e.*, the District of Columbia and 49 States, excluding California. Further, these changes are not a significant deviation from the professional responsibility rules for practitioners that are already required by the Office.

Table 1 shows the principal sources of the USPTO Rules. In general, the numbering of the USPTO Rules largely tracks the numbering of the ABA Model Rules. For example, USPTO Rule 11.101 parallels ABA Model Rule 1.1; USPTO Rule 11.102 parallels ABA Model Rule 1.2; USPTO Rule 11.201 parallels ABA Model Rule 2.1; et cetera. The discussion below highlights instances where the USPTO Rules diverge from the ABA Model Rules.

This rulemaking reserves or declines to implement certain provisions set forth in the ABA Model Rules. For example, the ABA Model Rules set forth specific provisions concerning domestic relations or criminal practice that do not appear in the USPTO Rules. *See, e.g.*, sections 11.102, 11.105(d), 11.108(g), 11.108(j), 11.301, 11.303(a)(3), 11.306, 11.308 and 11.704(c). Conduct that would violate an unadopted provision might nevertheless also violate an adopted provision (*e.g.*, the conduct might also violate the broader obligations under section 11.804 of the USPTO Rules). In addition, a licensed attorney is subject to the professional conduct rules of appropriate State licensing authorities, as well as of any courts before which the attorney practices. Failure to comply with those rules may lead to disciplinary action against the practitioner by the appropriate State bar or court and, in turn, possible reciprocal action against

the practitioner by the USPTO. *See* 37 CFR 11.24 and 11.804(h).

In August 2012, the ABA House of Delegates approved revisions to the ABA Model Rules recommended by the ABA Commission on Ethics 20/20. *See http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120808_house_action_compilation_redline_105a-f.authcheckdam.pdf.* The Notice of Proposed Rulemaking, published on October 18, 2012, solicited comments as to whether those changes should be incorporated into the USPTO Rules. Based upon the feedback the Office received, the Office has incorporated some technical revisions into these final rules.

The Office did not change the preamble to section 11.1. This preamble provides in part: "This part governs solely the practice of patent, trademark, and other law before the United States Patent and Trademark Office. Nothing in this part shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the United States Patent and Trademark Office to accomplish its Federal objectives." Attorneys who practice before the Office are subject to professional conduct rules established by the Office as well as the appropriate State bars.

The Office adopted rules governing the conduct of disciplinary investigations in 2008. *See* 73 FR 47650 (Aug. 14, 2008). Experience under these rules has demonstrated areas in which the rules could be clarified. Accordingly, the Office also revised existing rules set forth at 37 CFR 11.19, 11.20, 11.22, 11.32, 11.34, 11.35 and 11.54. Finally, the Office is incorporating the survey rule, currently set forth at 37 CFR 10.11, as section 11.11(a)(2).

Discussion of Specific Rules

Section 1.4(d)(4) is corrected by deleting the reference to § 11.804(b)(9), which does not exist.

Section 1.21(a)(7) and (a)(8) is deleted since the annual practitioner maintenance fee is removed by this rule. The Office published a Final Rule, *Setting and Adjusting Patent Fees,* 78 FR 4212 (Jan. 18, 2013), wherein the practitioner maintenance fee is set at $120, but also noting that the Office has not collected those fees since 2009, making total collections $0. The Office is removing this practitioner maintenance fee, which is set forth in 11.8(d).

Section 2.2(c) is revised to delete the reference to part 10 of this chapter, which is removed and reserved.

Section 7.25(a) is revised to delete the reference to part 10 of this chapter, which is removed and reserved.

Part 10 is removed and reserved.

Section 11.1 defines terms used in the USPTO Rules. The definitions of *mandatory disciplinary rule* and *matter* are deleted; the definitions of *fraud* or *fraudulent* and *practitioner* are revised; and the terms *confirmed in writing, firm* or *law firm, informed consent, law-related services, partner, person, reasonable belief* or *reasonably believes, reasonably should know, screened, tribunal,* and *writing* or *written* are defined. The definition of *practitioner* is updated to refer to section 11.14 rather than section 10.14, and to refer to § 11.14(a), (b) and (c) rather than § 11.14(b), (c) and (e). The new definitions generally comport to definitions set forth in the ABA Model Rules. However, the definition of *fraud* or *fraudulent* used in the ABA Model Rules is not adopted. Instead, the Office believes a uniform definition based on common law should apply to all individuals subject to the USPTO Rules. Accordingly, the definition is based on the definition of common law fraud discussed by the United States Court of Appeals for the Federal Circuit. *See Unitherm Food Systems, Inc.* v. *Swift-Ekrich, Inc.,* 375 F.3d 1341, 1358 (Fed. Cir. 2004); *In re Spalding Sports Worldwide, Inc.,* 203 F.3d 800, 807 (Fed. Cir. 2000). Further, in the definition of *tribunal,* the reference to "the Office" includes those persons or entities acting in an adjudicative capacity.

Section 11.2(c) is revised to delete redundant language.

Section 11.2(d) is revised to clarify that a party dissatisfied with a final decision of the Office of Enrollment and Discipline (OED) Director regarding enrollment or recognition must exhaust administrative remedies before seeking judicial review.

Section 11.2(e) is revised to clarify that an action or notice of the OED Director is not a final agency decision under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* A party dissatisfied with an action or notice of the OED Director, during or at the conclusion of a disciplinary investigation, must exhaust administrative remedies before seeking judicial review.

Section 11.8(d) is reserved. The USPTO is deleting reference to an annual practitioner maintenance fee.

Section 11.9(b) is revised to change the language "Bureau of Citizenship and Immigration Services" to "United States Government." This minor change is necessary to comport with the current practice of granting limited recognition, when appropriate, to individuals issued employment authorizations by other United States Government agencies, such as the Department of State. The Office does not expect this rule to increase or decrease the grant of limited recognition by the Office.

Section 11.11 is revised to change the language "registered attorney or agent" to "registered practitioner" and add the term "registered" as appropriate.

Section 11.11(a) and (b) is revised to substantially incorporate the provisions currently set forth in 37 CFR 10.11. Specifically, the provisions of § 11.11(a) appear as § 11.11(a)(1) and the provisions of § 10.11 of the USPTO Code appear as § 11.11(a)(2). Additionally, § 11.11(b) is revised to provide that a practitioner failing to comply with § 11.11(a)(2) would be placed on administrative suspension, rather than removed from the register as set forth in section 10.11 of the USPTO Code. Additionally, § 11.11(b)(1) is revised to delete reference to § 11.8(d). Also, section 11.11(b)(4) is reserved since an annual practitioner maintenance fee is deleted by this final rule.

Section 11.11(c) is revised to change the reference to the "Mandatory Disciplinary Rules" to read "USPTO Rules of Professional Conduct." Section 11.11(c) is further revised to delete reference to an annual practitioner maintenance fee.

Section 11.11(d) is revised by updating the previous reference to section 10.40 to refer to § 11.116, which includes provisions related to withdrawal from representation. Section 11.11(d) is also revised to delete reference to an annual practitioner maintenance fee. Paragraphs (d)(2) and (d)(4) are deleted and reserved since they were directed to an annual practitioner maintenance fee.

Section 11.11(e) is revised to update the reference to the "Mandatory Disciplinary Rules" to read "USPTO Rules of Professional Conduct."

Section 11.11(f) is revised to remove reference to § 1.21(a)(7)(i) and (a)(8)(i), which provided for an annual practitioner maintenance fee.

Section 11.19(a) is revised to expressly provide jurisdiction over a person not registered or recognized to practice before the Office if the person provides or offers to provide any legal services before the Office. This change is consistent with the USPTO's statutory and inherent authority to regulate practice before the Office, and it is consistent with the second sentence of ABA Model Rule 8.5(a). Nothing in this change or in part 11 limits the Office from continuing to exercise

independent authority to exclude non-practitioners from proceedings before the Office, or to deny or revoke public access to electronic systems maintained by the Office, as warranted.

Section 11.20(a)(4) is revised to clarify that disciplinary sanctions that may be imposed upon revocation of probation are not necessarily limited to the remainder of the probation period.

Section 11.20(b) is revised to more clearly set forth conditions that may be imposed with discipline.

Section 11.21 is revised to update the reference to the "Mandatory Disciplinary Rules" to read "USPTO Rules of Professional Conduct."

Section 11.22 is revised to change the title to "Disciplinary Investigations" for clarity.

Section 11.22(f)(2) is revised to update the reference to the "Mandatory Disciplinary Rules" to read "USPTO Rules of Professional Conduct."

Section 11.22(i) is revised to correct a technical error in the heading. Specifically, the reference to a warning letter in the heading could mistakenly have been viewed as indicating that issuance of a warning means at least one of the conditions set forth in that section apply. Indeed, a warning may be issued in situations where, for example, there is sufficient evidence to conclude that there is probable cause to believe that grounds exist for discipline. However, in a situation where a potential violation of the disciplinary rules is minor in nature or was not willful, it often is in the interest of the Office, practitioners, and the public to resolve the matter with a warning rather than a formal disciplinary action.

Section 11.24(e) is revised to make a technical correction. Specifically, the previous reference to 37 CFR 10.23 is updated to refer to § 11.804.

Section 11.25(a) is revised to update the reference to the "Mandatory Disciplinary Rules" to read "USPTO Rules of Professional Conduct."

Section 11.32 is revised to clarify that the OED Director has the authority to exercise discretion in referring matters to the Committee on Discipline and in recommending settlement or issuing a warning in matters where the Committee on Discipline has made a probable cause determination. The section is also revised to make a technical correction by deleting the reference to sections 11.19(b)(3) through (5), which do not exist.

Section 11.34 is revised to incorporate several technical corrections. Specifically, section 11.34(a) is revised to eliminate an erroneous reference to § 11.25(b)(4). The requirements set forth in § 11.34 apply to complaints filed in disciplinary proceedings under sections 11.24, 11.25, and 11.32. The revision to § 11.34(a)(1) clarifies that an individual other than a "practitioner" may be a respondent. The revision to § 11.34(b) updates the reference to the "Mandatory Disciplinary Rules" to read "USPTO Rules of Professional Conduct."

Section 11.35(a)(2)(ii) and (a)(4)(ii) is revised by changing the term "a nonregistered practitioner" to "not registered." The section now specifies the service address for an individual subject to the Office's disciplinary jurisdiction who does not meet the definition of "practitioner" set forth in § 11.1.

Section 11.54(a)(2) and (b) is revised to clarify that an initial decision of the hearing officer may impose conditions deemed appropriate under the circumstances, and should explain the reason for probation and any conditions imposed with discipline.

Section 11.58(b)(2) is revised to update the reference to § 10.40 to refer to § 11.116.

Section 11.58(f)(1)(ii) is revised to update the reference to the "Mandatory Disciplinary Rules" to read "USPTO Rules of Professional Conduct" and to delete reference to § 10.20(b).

Section 11.61 is deleted and reserved. In its place, a savings clause is added at the end of part 11.

USPTO Rules of Professional Conduct

Section 11.101 addresses the requirement that practitioners provide competent representation to a client. Consistent with the provisions of 37 CFR 11.7, this rule acknowledges that competent representation in patent matters requires scientific and technical knowledge, skill, thoroughness and preparation as well as legal knowledge, skill, thoroughness and preparation, and otherwise corresponds to ABA Model Rule 1.1.

Section 11.102 provides for the scope of representation of a client by a practitioner and the allocation of authority between the client and the practitioner. This section corresponds to ABA Model Rule 1.2. However, the USPTO is declining to enact the substance of the last sentence of ABA Model Rule 1.2(a) as the USPTO does not regulate criminal law practice. Nonetheless, a patent attorney who engages in the practice of criminal law is subject to the disciplinary rules of the appropriate State and Court authorities. Failure to comply with those rules may lead to disciplinary action against the practitioner and, in turn, possible reciprocal action against the practitioner by the USPTO. *See* 37 CFR 11.24 and 11.804(h). Moreover, the lack of a specific disciplinary rule concerning particular conduct should not be viewed as suggesting that the conduct would not violate general provisions of the USPTO Rules.

Section 11.102(b) is reserved as the USPTO has declined to enact a specific rule regarding a practitioner's endorsement of a client's view or activities. However, the USPTO does not imply that a practitioner's representation of a client constitutes an endorsement of the client's political, economic, social, or moral views or activities.

Section 11.103 addresses the practitioner's duty to act with reasonable diligence and promptness in representing a client. This rule corresponds to ABA Model Rule 1.3.

Section 11.104 addresses the practitioner's duty to communicate with the client. This rule corresponds to ABA Model Rule 1.4. As in § 10.23(c)(8), under this rule a practitioner should not fail to timely and adequately inform a client or former client of correspondence received from the Office in a proceeding before the Office or from the client's or former client's opponent in an *inter partes* proceeding before the Office when the correspondence (i) could have a significant effect on a matter pending before the Office; (ii) is received by the practitioner on behalf of a client or former client; and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified.

Section 11.105 addresses the practitioner's responsibilities regarding fees. This rule corresponds to ABA Model Rule 1.5. Nothing in paragraph (c) should be construed to prohibit practitioners gaining proprietary interests in patents under section 11.108(i)(3).

Section 11.105(d) is reserved as the USPTO has declined to enact a specific rule regarding contingent fee arrangements for domestic relations and criminal matters.

Section 11.106 addresses the practitioner's responsibilities regarding maintaining confidentiality of information. This section generally corresponds to ABA Model Rule 1.6, but it includes exceptions in the case of inequitable conduct before the Office, in addition to crimes and fraud.

Section 11.106(b)(3) states that a practitioner may reveal information relating to the representation of a client to the extent the practitioner reasonably believes necessary to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has

resulted from inequitable conduct before the Office.

Section 11.106(c) provides that a practitioner is required to disclose to the Office all information necessary to comply with the duty of disclosure rules of this subchapter in practice before the Office. Solely for the purposes of enforcement under 37 CFR part 11 (Representation of Others Before The United States Patent and Trademark Office), if a practitioner has a conflict of interest in a given matter, arising from a different client, timely withdrawal by the practitioner from the given matter would generally result in OED not seeking discipline for conflicts of interest under part 11.

Section 11.107 prohibits a practitioner from representing a client if the representation involves a concurrent conflict of interest. This rule corresponds to ABA Model Rule 1.7. *See also* 37 CFR 10.66.

Section 11.108 addresses conflicts of interest for current clients and specific rules, including rules regarding practitioners entering into business transactions with clients, the use of information by a practitioner relating to representation of a client, gifts between the practitioner and a client, literary rights based on information relating to representation of a client, a practitioner's provision of financial assistance to the client, compensation for services by a third party, aggregate settlement of claims where the practitioner represents two or more clients in a similar matter, agreements between the client and practitioner limiting liability of the practitioner, and the practitioner's acquiring a proprietary interest in the matter. This rule corresponds to ABA Model Rule 1.8.

Section 11.108(e) provides that a practitioner shall not provide financial assistance to a client in connection with pending or contemplated litigation or proceeding before the Office, except that a practitioner may advance court or tribunal costs and expenses of litigation. However, a practitioner representing an indigent client may pay court or tribunal costs and expenses of litigation or a proceeding before the Office on behalf of the client. Section 11.108(e)(3) also provides that a practitioner may advance costs and expenses in connection with a proceeding before the Office provided the client remains ultimately liable for such costs and expenses. Section 11.108(e)(4) provides that a practitioner may also advance any fee required to prevent or remedy an abandonment of a client's application by reason of an act or omission attributable to the practitioner and not to the client, whether or not the client is ultimately liable for such fee. *See* 37 CFR 10.64(b).

Section 11.108(g) differs from ABA Model Rule 1.8(g) in that the USPTO has declined to enact the portion of the rule relating to representation of clients in criminal matters and the corresponding regulation of multiple clients agreeing to an aggregated agreement as to guilty or nolo contendere pleas.

Section 11.108(i) differs from ABA Model Rule 1.8(i) in that the USPTO provides that a practitioner may, in a patent case, take an interest in the patent or patent application as part or all of his or her fee. *See* 37 CFR 10.64(a)(3). However, practitioners who take an interest in a patent or patent application as part of or all of their fee remain subject to the conflict of interest provisions of § 11.108.

Section 11.108(j) is reserved. The USPTO has declined to enact a rule that specifically addresses sexual relations between practitioners and clients. Because of the fiduciary duty to clients, combining a professional relationship with any intimate personal relationship may raise concerns about conflict of interest and impairment of the judgment of both practitioner and client. To the extent warranted, such conduct may be investigated under general provisions of the USPTO Rules. *See* § 11.804.

Section 11.109 addresses conflicts of interest and duties to former clients. This rule corresponds to ABA Model Rule 1.9.

Section 11.110 addresses the imputation of conflicts of interest for practitioners in the same firm. This rule differs from ABA Model Rule 1.10 in that paragraph (a)(2)(iii) has not been incorporated.

Section 11.111 addresses former or current Federal Government employees. This rule deals with practitioners who leave public office and enter private employment. It applies to judges and their law clerks as well as to practitioners who act in other capacities. The USPTO has declined to enact ABA Model Rule 1.11 and is instead enacting its own rule regarding successive government and private employment, namely, that a practitioner who is a former or current Federal Government employee shall not engage in any conduct which is contrary to applicable Federal ethics laws, including conflict of interest statutes and regulations of the department, agency, or commission formerly or currently employing said practitioner. *See, e.g.,* 18 U.S.C. 207.

A practitioner representing a United States Government agency, whether employed or specially retained by the United States Government, is subject to the USPTO Rules, including the prohibition against representing adverse interests stated in section 11.107 and the protections afforded former clients in section 11.109. In addition, such a practitioner is subject to this section and to statutes and regulations, as well as government policies, concerning conflicts of interest and other Federal ethics requirements.

Section 11.112 provides specific rules regarding the imputation of conflicts of interest for practitioners who are former judges, arbitrators, mediators or third-party neutrals. This rule corresponds to ABA Model Rule 1.12.

Section 11.113 provides specific rules regarding a practitioner's responsibilities when representing an organization as a client. This rule corresponds to ABA Model Rule 1.13.

Section 11.114 provides specific rules regarding a practitioner's responsibilities when representing a client with diminished capacity. This rule corresponds to ABA Model Rule 1.14.

Section 11.115 provides specific rules regarding a practitioner's responsibilities regarding safekeeping of client property and maintenance of financial records. This rule corresponds to ABA Model Rule 1.15.

Section 11.115(a) requires that funds be kept in a separate client or third person account maintained in the state where the practitioner's office is situated, or elsewhere with the consent of the client or third person. Some practitioners are located outside of the United States. The USPTO Rules require that where the practitioner's office is situated in a foreign country, funds shall be kept in a separate account maintained in that foreign country or elsewhere with the consent of the client or third person. *See also* 37 CFR 10.112.

Section 11.115(b)–(e) corresponds to ABA Model Rule 1.15(b)–(e).

Section 11.115(f) requires that the type of records specified by section 11.115(a) be consistent with (i) The ABA Model Rules for Client Trust Account Records; (ii) for lawyer practitioners, the types of records that are maintained meet the recordkeeping requirements of a state in which the lawyer is licensed and in good standing, the recordkeeping requirements of the state where the lawyer's principal place of business is located, or the recordkeeping requirements of this section; and/or (iii) for patent agents and persons granted limited recognition who are employed in the United States by a law firm, the recordkeeping requirements of the state where at least one lawyer of the law firm is licensed

and in good standing, the recordkeeping requirements of the state where the law firm's principal place of business is located, or the recordkeeping requirements of this section. According to the ABA Standing Committee on Client Protection, the ABA Model Rules for Client Trust Account Records responds to a number of changes in banking and business practices that may have left lawyers "inadvertently running afoul of their jurisdiction's rules of professional conduct." The new rule addresses recordkeeping requirements after electronic transfers and clarifies who can authorize such transfers. The rule also accounts for the Check Clearing for the 21st Century Act, which allows banks to substitute electronic images of checks for canceled checks. The rule also addresses the increasing prevalence of electronic banking and wire transfers or electronic transfers of funds, for which banks do not routinely provide specific confirmation. The rule acknowledges those issues, addressing recordkeeping requirements after electronic transfers and clarifying who can authorize such transfers, record maintenance, and safeguards required for electronic record storage systems. The rule also details minimum safeguards practitioners must implement when they allow non-practitioner employees to access client trust accounts; addresses partner responsibilities for storage of and access to client trust account records when partnerships are dissolved or when a practice is sold; and allows practitioners to maintain client trust account records in electronic, photographic, computer or other media or paper format, either at the practitioner's office or at an off-site storage facility, but requires that records stored off-site be readily accessible to the practitioner and that the practitioner be able to produce and print them upon request.

Section 11.115(f) requires a practitioner to maintain the same records as the practitioner must currently maintain to comply with § 10.112(c)(3), which required a practitioner to "maintain complete records of all funds, securities and other properties of a client coming into the possession of the practitioner." Section 10.112(c)(3) is substantially the same as DR 9–102(b)(3) of the Model Code of Professional Responsibility of the American Bar Association, which was adopted by numerous states. It has been long recognized that compliance with the Code's rule requires maintenance of, *inter alia*, a cash receipts journal, a cash disbursements journal, and a subsidiary ledger, as well as periodic trial balances, and insufficient fund check reporting. *See Wright* v. *Virginia State Bar*, 357 S.E.2d 518, 519 (Va. 1987); *In re Librizzi*, 569 A.2d 257, 258–59 (N.J. 1990); *In re Heffernan*, 351 N.W.2d 13. 14 (Minn. 1984); *In re Austin*, 333 N.W.2d 633, 634 (Minn. 1983); and *In re Kennedy*, 442 A.2d 79, 84–85 (Del. 1982). Thus, § 11.115(f) clarifies recordkeeping requirements that apply to all practitioners through § 10.112(c)(3).

Section 11.116 provides rules regarding a practitioner's responsibilities in declining or terminating representation of a client. This rule corresponds to ABA Model Rule 1.16.

Section 11.117 provides rules regarding a practitioner's responsibilities when buying or selling a law practice or an area of law practice, including goodwill. This rule corresponds to ABA Model Rule 1.17.

Section 11.117(b) differs from ABA Model Rule 1.17(b) in that, to the extent the practice or the area of practice to be sold involves patent proceedings before the Office, the practice or area of practice may be sold only to one or more registered practitioners or law firms that include at least one registered practitioner.

Section 11.118 provides rules regarding a practitioner's responsibilities to prospective clients. This rule corresponds to ABA Model Rule 1.18.

Sections 11.119–11.200 are reserved.

Section 11.201 provides a rule addressing the practitioner's role in providing advice to a client and corresponds to ABA Model Rule 2.1.

Section 11.202 is reserved. ABA Model Rule 2.2 was deleted in 2002 as the ABA no longer treats intermediation and the conflict-of-interest issues it raises separately from any other multi-representation conflicts. Issues relating to practitioners acting as intermediaries are dealt with under § 11.107 in this final rule.

Section 11.203 articulates the ethical standards for circumstances where a practitioner provides an evaluation of a matter affecting a client for use by a third party. This rule corresponds to ABA Model Rule 2.3. It should be noted that with respect to evaluation information under § 11.203 a practitioner is required to disclose information in compliance with the duty of disclosure provisions of this subchapter subject to disclosure to the USPTO pursuant to § 11.106(c).

Section 11.204 addresses the practitioner's role in serving as a third-party neutral, whether as an arbitrator, a mediator, or in such other capacity, and corresponds to ABA Model Rule 2.4.

Sections 11.205–11.300 are reserved.

Section 11.301 requires that a practitioner present well-grounded positions. The advocate has a duty to use legal procedure for the fullest benefit of the client's cause. The advocate also has a duty not to abuse the legal process. This rule corresponds to ABA Model Rule 3.1, however, the USPTO is declining to enact the ABA Model Rule requirement that a lawyer for the defendant in a criminal proceeding may defend the proceeding by requiring that every element of the case be established. The USPTO did not adopt the specific reference because it is a professional conduct rule limited to the practice of criminal law. Nonetheless, a patent attorney who engages in the practice of criminal law is subject to the disciplinary rules of the appropriate State and Court authorities. Failure to comply with those rules may lead to disciplinary action against the practitioner and, in turn, possible reciprocal action against the practitioner by the USPTO. *See* 37 CFR 11.24 and 11.804(h). Moreover, the lack of a specific disciplinary rule concerning particular conduct should not be viewed as suggesting that the conduct would not violate general provisions of the USPTO Rules.

Section 11.302 requires that practitioners diligently pursue litigation and Office proceedings. This rule corresponds to ABA Model Rule 3.2, adding that a practitioner shall make reasonable efforts to expedite proceedings before the Office as well as in litigated matters.

Section 11.303 corresponds to ABA Model Rule 3.3. Section 11.303(a)(2) sets forth the duty to disclose to the tribunal legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel in an *inter partes* proceeding. It also sets forth this duty for an *ex parte* proceeding before the Office where the legal authority is not otherwise disclosed. All decisions made by the Office in patent and trademark matters affect the public interest. *See Lear, Inc.* v. *Adkins*, 395 U.S. 653 (1969). Many of the decisions made by the Office are made *ex parte*. Accordingly, practitioners must cite to the Office known authority that is contrary, *i.e.*, directly adverse, to the position being taken by the practitioner in good faith. Section 11.303(a)(3) does not include a reference to testimony of a defendant in a criminal matter, as set forth in ABA Model Rule 3.3(a)(3) as the

USPTO does not regulate criminal law practice.

Section 11.303(e) specifies that in a proceeding before the Office, a practitioner must disclose information necessary to comply with the duty of disclosure provisions of this subchapter in practice before the Office. The practitioner's responsibility to present the client's case with persuasive force is qualified by the practitioner's duty of candor to the tribunal. *See Lipman* v. *Dickinson,* 174 F.3d 1363 (Fed. Cir. 1999).

Section 11.304 contemplates that evidence be marshaled fairly in a case before a tribunal, including in *ex parte* and *inter partes* proceedings before the Office. This rule corresponds to ABA Model Rule 3.4, but it clarifies that the duties of the practitioner are not limited to trial matters, but also apply to any proceeding before a tribunal.

Section 11.305 requires that practitioners act with impartiality and decorum in *ex parte* and *inter partes* proceedings. This rule corresponds to ABA Model Rule 3.5, but clarifies that it is improper to seek to improperly influence a hearing officer, administrative law judge, administrative patent judge, administrative trademark judge, employee, or officer of the Office. This rule does not prohibit *ex parte* communication that is authorized by law, rule, or court order, in an *ex parte* proceeding.

Section 11.305(c) is reserved as the USPTO is declining to enact a specific rule regarding a practitioner's communication with a juror or prospective juror. Nonetheless, a practitioner who engages in the practice of improper communication with a juror or prospective juror is subject to criminal laws and the disciplinary rules of the appropriate State and Court authorities. Failure to comply with those laws and rules may lead to disciplinary action against the practitioner and, in turn, possible reciprocal action against the practitioner by the USPTO. *See* 37 CFR 11.24 and 11.804(h). Moreover, the lack of a specific disciplinary rule concerning particular conduct should not be viewed as suggesting that the conduct would not violate one or more of the USPTO Rules (*e.g.,* § 11.804).

Section 11.306 specifies conduct regarding trial publicity. This rule corresponds to ABA Model Rule 3.6. However, the USPTO is declining to enact paragraph (b)(7) of ABA Model Rule 3.6 regarding what a lawyer may state in a criminal case as the USPTO does not regulate criminal law practice.

Section 11.307 generally proscribes a practitioner from acting as an advocate in a proceeding before the Office in which the practitioner is likely to be a necessary witness. Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the practitioner and client. This rule corresponds to ABA Model Rule 3.7.

Section 11.308 is reserved. ABA Model Rule 3.8 addresses the "Special Responsibilities of a Prosecutor" in the context of criminal proceedings. Because practice before the Office does not involve criminal proceedings, the content of ABA Model Rule 3.8 is not being adopted. Nevertheless, an attorney who is both a practitioner before the Office and a criminal prosecutor may be subject to both the Office and other professional conduct rules. Discipline by a duly constituted authority of a State, the United States, or the country in which a practitioner resides may lead to reciprocal disciplinary action by the Office. *See* 37 CFR 11.24 and 11.804(h). Moreover, the lack of a specific disciplinary rule concerning particular conduct should not be viewed as suggesting that the conduct would not violate general provisions of the USPTO Rules.

Section 11.309 regulates a practitioner's conduct when he or she is representing a client in a non-adjudicative proceeding before an administrative agency, such as the Office. This rule corresponds to ABA Model Rule 3.9.

Sections 11.310–11.400 are reserved.

Section 11.401 requires a practitioner to be truthful when dealing with others on a client's behalf. This rule corresponds to ABA Model Rule 4.1.

Section 11.402 provides a standard for communicating with a represented party. Section 11.402(a) corresponds to ABA Model Rule 4.2. Section 11.402(a) differs from ABA Model Rule 4.2 in that the USPTO Rule adds that in addition to a practitioner being authorized to communicate with a represented party when the practitioner is authorized by law or a court order, a practitioner may communicate with a represented party when the practitioner is authorized by rule to do so.

Section 11.402(b) is based on District of Columbia Rule of Professional Conduct 4.2(b) and recognizes that special considerations come into play when the Federal Government, including the Office, is involved in a lawsuit. It permits communications with those in Government having the authority to redress such grievances (but not with other Government personnel), without the prior consent of the practitioner representing the Government in such cases. However, a practitioner making such a communication without the prior consent of the practitioner representing the Government must make the disclosures required by § 11.402(b) in the case of communications with non-party employees.

Section 11.402(b) does not permit a practitioner to bypass counsel representing the government on every issue that may arise in the course of disputes with the government. It is intended to provide practitioners access to decision makers in government with respect to genuine grievances, such as to present the view that the government's basic policy position with respect to a dispute is faulty, or that government personnel are conducting themselves improperly with respect to aspects of the dispute. It is not intended to provide direct access on routine disputes such as ordinary discovery disputes, extensions of time or other scheduling matters, or similar routine aspects of the resolution of disputes.

Section 11.403 provides a standard for communicating with an unrepresented person, particularly one not experienced in dealing with legal matters. This rule corresponds to ABA Model Rule 4.3.

Section 11.404 requires a practitioner to respect the rights of third parties. Responsibility to a client requires a practitioner to subordinate the interests of others to those of the client, but that responsibility does not imply that a practitioner may disregard the rights of third persons. The rule also provides helpful information to practitioners regarding the receipt of inadvertently sent documents and electronically stored information. This rule corresponds to ABA Model Rule 4.4.

Sections 11.405–11.500 are reserved.

Section 11.501 sets forth the responsibilities of a partner or supervisory practitioner. This rule corresponds to ABA Model Rule 5.1.

Section 11.502 sets forth the ethical and professional conduct responsibilities of a subordinate practitioner. This rule corresponds to ABA Model Rule 5.2.

Section 11.503 sets forth a practitioner's responsibilities regarding non-practitioner assistance. Practitioners generally employ assistants in their practice, including secretaries, technical advisors, student associates, draftspersons, investigators, law student interns, and paraprofessionals. This rule specifies the practitioner's responsibilities in supervising non-practitioner assistants and corresponds to ABA Model Rule 5.3.

Section 11.504 protects the professional independence of a

practitioner by providing traditional limitations on sharing fees with non-practitioners. This rule corresponds to ABA Model Rule 5.4. *See also* 37 CFR 10.48, 10.49, 10.68.

Section 11.504(a)(4) is based upon the District of Columbia Rule of Professional Conduct 5.4(a)(5), rather than the ABA Model Rule. Section 11.504(a)(4) permits a practitioner to share legal fees with a nonprofit organization that employed, retained, or recommended employment of the practitioner in the matter. A practitioner may decide to contribute all or part of legal fees recovered from the opposing party to the nonprofit organization. Such a contribution may or may not involve fee-splitting, but when it does, the prospect that the organization will obtain all or part of the practitioner's fees does not inherently compromise the practitioner's professional independence, whether the practitioner is employed by the organization or was only retained or recommended by it. A practitioner who has agreed to share legal fees with such an organization remains obligated to exercise professional judgment solely in the client's best interests. Moreover, fee-splitting in these circumstances may promote the financial viability of such nonprofit organizations and facilitate their public interest mission. Unlike the corresponding provision of the ABA Model Rules, this provision is not limited to sharing of fees awarded by a court, because that restriction would significantly interfere with settlement of cases outside of court without significantly advancing the purpose of the exception. To prevent abuse, it applies only if the nonprofit organization has been recognized by the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code.

Section 11.505 proscribes practitioners from engaging in or aiding the unauthorized practice of law. The rule notes that a practitioner shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. The USPTO is another jurisdiction for the purposes of this rule. *See, e.g., In re Peirce*, 128 P.3d 443, 444 (Nev. 2006) (concluding that "another jurisdiction" includes the USPTO). In addition, the Office notes the express prohibition against holding oneself out as recognized to practice before the Office if not recognized by the Office to do so. *See* 35 U.S.C. 33. This rule corresponds to ABA Model Rule 5.5(a). The USPTO declines to adopt the remainder of ABA Model Rule 5.5 including those provisions regarding multijurisdictional practice of law.

Limiting the practice of patent law before the Office to those recognized to practice protects the public against rendition of legal services by unqualified persons or organizations. A patent application is recognized as being a legal document and registration to practice before the USPTO sanctions "the performance of those services which are reasonably necessary and incident to the preparation and prosecution of patent applications." *Sperry* v. *Florida*, 373 U.S. 379, 386 (1963). Thus, a registered practitioner may practice in patent matters before the Office regardless of where they reside within the United States.

It is noted that the USPTO registers individuals, not law firms or corporations, to practice in patent matters before the Office. Thus, a corporation is not authorized to practice law and render legal services. Instead, upon request and for a fee, the corporation could cause a patent application to be prepared by a registered practitioner. *See Lefkowitz* v. *Napatco, Inc.*, 415 N.E.2d 916 (N.Y. 1980). There are numerous cases and ethics opinions wherein attorneys have been found to have aided lay organizations in the unauthorized practice of law by agreeing to accept referrals from a non-lawyer engaged in unauthorized practice of law. For example, an attorney was found to have aided the unauthorized practice of law by permitting a non-attorney operating as a business to gather data from estate planning clients for preparation of legal documents and forward the data to the attorney who thereafter prepared the documents (including a will, living trust, living will, and powers of attorney). The attorney, without having personally met or corresponded with the client, forwarded the documents to the non-attorney for the client to execute. *See Wayne County Bar Ass'n.* v. *Naumoff*, 660 N.E.2d 1177 (Ohio 1996). *See also Comm. on Prof'l Ethics & Conduct* v. *Baker*, 492 N.W.2d 695 (Iowa 1992); *People* v. *Laden*, 893 P.2d 771 (Colo. 1995); *People* v. *Macy*, 789 P.2d 188 (Colo. 1990); *People* v. *Boyls*, 591 P.2d 1315 (Colo. 1979); *In re Discipio*, 645 N.E.2d 906 (Ill. 1994); *In re Komar*, 532 N.E.2d 801 (Ill. 1988); Formal Opinion 705, Committee on Professional Ethics of the Illinois State Bar Association (1982); Formal Opinion 1997–148, Standing Committee on Professional Responsibility and Conduct (California); Formal Opinion 87, Ethics Committee of the Colorado State Bar (1991).

Section 11.506 prohibits agreements restricting rights to practice. This rule corresponds to ABA Model Rule 5.6.

Section 11.507 provides that a practitioner is subject to the USPTO Rules if the practitioner provides law-related services. This rule corresponds to ABA Model Rule 5.7. The definition of "law-related service" is set forth in § 11.1.

Sections 11.508–11.600 are reserved.

Sections 11.601–11.700 are reserved. The USPTO declines to adopt ABA Model Rules regarding public service. The USPTO recognizes that every practitioner, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay and that every practitioner should support all proper efforts to meet this need for legal services. However, attorney practitioners' individual state ethics rules should provide useful information regarding their respective duties to provide voluntary pro bono service, accept court appointed representation, and serve as members of legal service and legal reform organizations. The USPTO declines to add an increased regulatory requirement on attorney practitioners.

Section 11.701 governs all communications about a practitioner's services, including advertising, and corresponds to ABA Model Rule 7.1.

Section 11.702 provides for advertising by practitioners. This section corresponds to ABA Model Rule 7.2. However, the USPTO is declining to enact the substance of ABA Model Rule 7.2(b)(2), as the USPTO does not currently regulate and does not anticipate regulating lawyer referral services.

Section 11.703 addresses the direct contact by a practitioner with a prospective client known to need legal services. This section corresponds to ABA Model Rule 7.3.

Section 11.704 permits a practitioner to indicate areas of practice in communications about the practitioner's services. Section 11.704(a) corresponds to ABA Model Rule 7.4(a).

Section 11.704(b), as with § 10.34, continues the long-established policy of the USPTO for the designation of practitioners practicing before the Office.

Section 11.704(c) is reserved as the USPTO is declining to regulate the communication of specialization in Admiralty practice.

Section 11.704(d) corresponds to ABA Model Rule 7.4(d).

Section 11.704(e) permits an individual granted limited recognition under § 11.9 to use the designation

"Limited Recognition" to indicate in communications about the individual's services that the individual, while not a "registered practitioner," is authorized to practice before the USPTO in patent matters subject to the limitations in the individual's grant of limited recognition under § 11.9.

Section 11.705 regulates firm names and letterheads. This section corresponds to ABA Model Rule 7.5.

Section 11.705(b) is reserved as the USPTO is declining to enact a specific rule regarding law firms with offices in more than one jurisdiction, since the USPTO encompasses one Federal jurisdiction. However, the USPTO is not implying that a law firm with offices in more than one jurisdiction may violate a State authority regulating this conduct. Nonetheless, a practitioner who engages in the improper use of firm names and letterhead is subject to the disciplinary rules of the appropriate State and Court authorities. Failure to comply with those rules may lead to disciplinary action against the practitioner and, in turn, possible reciprocal action against the practitioner by the USPTO. *See* 37 CFR 11.24 and 11.804(h). Moreover, the lack of a specific disciplinary rule concerning particular conduct should not be viewed as suggesting that the conduct would not violate one or more of the USPTO Rules. *See* 37 CFR 11.804.

Section 11.705(d) is deleted. The USPTO declines to adopt ABA Model Rule 7.5(d) providing that practitioners may state or imply that they practice in a partnership or other organization only when that is the fact. However, the USPTO is not implying that practitioners may state or imply that they practice in a partnership or other organization if that is not the fact. Nonetheless, a practitioner who engages in the improper use of firm names and letterhead is subject to the disciplinary rules of the appropriate State and Court authorities. Failure to comply with those rules may lead to disciplinary action against the practitioner and, in turn, possible reciprocal action against the practitioner by the USPTO. *See* 37 CFR 11.24 and 11.804(h). Moreover, the lack of a specific disciplinary rule concerning particular conduct should not be viewed as suggesting that the conduct would not violate one or more of the general provisions of the USPTO Rules. *See* 37 CFR 11.804.

Section 11.706 is reserved as the USPTO declines to enact a specific rule regarding political contributions to obtain legal engagements or appointments by judges. However, the USPTO is not implying that a practitioner or law firm may accept a government legal engagement or an appointment by a judge if the practitioner or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment. Nonetheless, a practitioner who engages in this type of practice is subject to the disciplinary rules of the appropriate State and Court authorities. Failure to comply with those rules may lead to disciplinary action against the practitioner and, in turn, possible reciprocal action against the practitioner by the USPTO. *See* 37 CFR 11.24 and 11.804(h). Moreover, the lack of a specific disciplinary rule concerning particular conduct should not be viewed as suggesting that the conduct would not violate one or more of the general provisions of the USPTO Rules. *See* 37 CFR 11.804.

Sections 11.707–11.800 are reserved.

Section 11.801 provides that an applicant for registration or recognition to practice before the Office is under the same duty of disclosure as a person seeking admission to a bar. This section generally corresponds to ABA Model Rule 8.1. This section clarifies that it pertains to applicants for registration or an applicant for recognition to practice before the Office and conforms to current USPTO practice in §§ 11.6, 11.7, 11.9, 11.14 and 11.58.

If a person makes a material false statement in connection with an application for registration or recognition, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event it may be relevant in a subsequent application. The duty imposed by § 11.801 applies to a practitioner's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a practitioner to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the practitioner's own conduct. Section 11.801 also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware. Moreover, Section 11.801(b) requires practitioners to cooperate with OED in an investigation of any matter before it and continues the practice set forth under § 10.131(b).

Section 11.802 requires that a practitioner not make a statement that the practitioner knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office. This section corresponds to ABA Model Rule 8.2. Government employees and officers such as administrative patent judges, administrative trademark judges, patent examiners, trademark examining attorneys, and petitions examiners, perform judicial and quasi-judicial functions. *See, e.g., United States* v. *Morgan,* 313 U.S. 409 (1941); *Western Elec. Co.* v. *Piezo Tech., Inc.,* 860 F.2d 428 (Fed. Cir. 1988) ("Patent examiners are quasi-judicial officials."); *see also Butterworth* v. *United States ex rel. Hoe,* 112 U.S. 50, 67 (1884) ("That it was intended that the commissioner of patents, in issuing or withholding patents * * * should exercise quasi-judicial functions, is apparent from the nature of the examinations and decision he is required to make."); *Chamberlin* v. *Isen,* 779 F.2d 522, 524 (9th Cir. 1985) ("[I]t has long been recognized that PTO employees perform a 'quasi-judicial' function in examining patent applications.") Such employees and officers are considered adjudicatory officers.

Section 11.803 requires reporting a violation of the USPTO Rules. This section corresponds to ABA Model Rule 8.3.

Self-regulation of the legal profession requires that members of the profession seek a disciplinary investigation when they know of a violation of the USPTO Rules. Consistent with § 10.24(a), a report about misconduct may not be required where it would involve violation of § 11.106(a). However, a practitioner should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests. Section 11.803(c) does not require disclosure of information otherwise protected by § 11.106, or information gained while participating in an approved lawyers assistance program. It should be noted that the USPTO does not sanction any lawyer's assistance programs and the reference thereto in § 11.803 is a reference to lawyer's assistance programs approved by a relevant state authority.

The appropriate authority to report misconduct depends on the situation and jurisdiction. If a violation is found that is within the jurisdiction of OED, it must be reported in writing to the Director of OED. *See* 35 U.S.C. 11.19(a) (disciplinary jurisdiction); 37 CFR 1.1(a)(5) (contact information); *see also* ABA Model Rule 8.3, cmt. 3 (2012) (applying similar considerations for judicial misconduct as for attorney misconduct whereby "[a] report should be made to the bar disciplinary agency unless some other agency, such as a

peer review agency, is more appropriate in the circumstances.").

Section 11.804 provides for discipline involving a variety of acts constituting misconduct. Section 11.804(a)–(f) corresponds to ABA Model Rule 8.4(a)–(f), respectively. It is noted that § 10.23(c) of the USPTO Code set forth specific examples of misconduct that constitute a violation of the rules. These examples generally continue to be violations under the new USPTO Rules.

Section 11.804(g) specifically provides that it is misconduct to knowingly assist an officer or employee of the Office in conduct that is a violation of applicable rules of conduct or other law.

Section 11.804(h) clearly sets forth that it is misconduct for a practitioner to be publicly disciplined on ethical grounds by any duly constituted authority of (1) a State, (2) the United States, or (3) the country in which the practitioner resides. *See* 37 CFR 11.24.

Section 11.804(i) sets forth that it continues to be misconduct for a practitioner to engage in conduct that adversely reflects on the practitioner's fitness to practice before the Office.

Section 11.805 is reserved. The USPTO declines to adopt the ABA Model Rule regarding disciplinary authority and choice of law. The disciplinary jurisdiction of the Office is set forth in § 11.19. The USPTO Director has statutory, under 35 U.S.C. 2(b)(2)(D) and 35 U.S.C. 32, and inherent authority to adopt rules regulating the practice of attorneys and other persons before the USPTO in patent, trademark, and non-patent law. The USPTO, like other Government agencies, has inherent authority to regulate who may practice before it as practitioners, including the authority to discipline practitioners. *See Goldsmith* v. *U.S. Board of Tax Appeals,* 270 U.S. 117 (1926); *Herman* v. *Dulles,* 205 F.2d 715 (D.C. Cir. 1953); and *Koden* v. *U.S. Department of Justice,* 564 F.2d 228 (7th Cir. 1977). Courts have affirmed that Congress, through the Administrative Procedure Act, 5 U.S.C. 500, did not limit the inherent power of agencies to discipline professionals who appear or practice before them. *See Polydoroff* v. *ICC,* 773 F.2d 372 (D.C. Cir. 1985); *Touche Ross & Co.* v. *SEC,* 609 F.2d 570 (2d Cir. 1979).

Sections 11.806–11.900 are reserved.

Section 11.901 contains the following savings clauses: (a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify disciplinary sanctions under the provisions of this part; and (b) No practitioner shall be subject to a disciplinary proceeding under this part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

Section 41.5 is revised to make a technical correction. Specifically, the previous reference to § 10.40 has been updated to refer to § 11.116.

Response to Comments

The Office received 19 responses commenting on the Notice of Proposed Rulemaking. Some comments received were not related to the proposed changes. Those comments have been forwarded to the appropriate department for further consideration and will not be addressed herein. The Office is always interested to hear feedback from the public. The comments germane to the USPTO Rules and the Office's responses to the comments follow:

Comment 1: Many comments supported the new rules and their alignment with State bar standards.

Response to Comment 1: The Office appreciates the commenters' support.

Comment 2: Two commenters suggested that changing the USPTO Code to the USPTO Rules, which are based on the ABA Model Rules, was not necessary because the USPTO Code was adequate and adopting the new ethics rules would make these rules subject to changes from a remote entity, *i.e.,* the ABA. Further, the comments noted that rule changes should be considered on a rule-by-rule basis by an internal authority.

Response to Comment 2: The Office appreciates the comments. Following the ABA Model Rules, with some modifications, allows for conformity with ethical standards already present in most other U.S. jurisdictions. Further, the new USPTO Rules reflect timely updates of the legal landscape, including advancements in technology and legal practices, which have changed since the 1985 adoption of the USPTO Code. The Office has independently considered whether to adopt each ABA Model Rule into the new USPTO Rules. The Office is not required to adopt the ABA Model Rules in whole or in part. The Office may adopt future changes to the ABA Model Rules as needed, necessary, or relevant to practice before the Office.

Comment 3: A comment suggested that the USPTO does not have any mechanism for enforcement of ethical standards.

Response to Comment 3: Consistent with existing practice, attorneys and agents will continue to be subject to discipline for not complying with USPTO regulations. *See* 35 U.S.C. 32; *see also Bender* v. *Dudas,* 490 F.3d 1361, 1368 (Fed. Cir. 2007) (35 U.S.C. 2(b)(2)(D) and 32 authorize the USPTO to discipline individuals who engage in misconduct related to "service, advice, and assistance in the prosecution or prospective prosecution of applications."). "The OED Director is authorized to investigate possible grounds for discipline." 37 CFR 11.22(a). An investigation may be initiated pursuant to "a grievance, information or evidence from any source suggesting possible grounds for discipline." *Id.* The USPTO aims to protect the public by maintaining the ethical integrity of practitioners practicing before the Office. Additionally, persons not registered or recognized to practice before the Office are subject to the disciplinary authority of the Office if they provide or offer to provide any legal services before the Office.

Comment 4: A comment questioned the decision not to establish a Continuing Legal Education ("CLE") requirement, noting that most patent attorneys are subject to CLE requirements through their State bars whereas patent agents are not.

Response to Comment 4: The Office appreciates the comment and understands that some agents may lack the formal training that attorney practitioners routinely obtain through CLE. The Office notes that all practitioners, including agents, are required under § 11.101 to provide competent representation to clients and to do so in compliance with the ethical and professional conduct requirements of these rules. Competent representation requires the legal, scientific, and technical knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. *Id.* To maintain competence, all practitioners should keep abreast of changes in the legal landscape. To that end, attending CLE courses may be helpful, but the Office is not instituting a mandatory CLE reporting requirement at this time. Further, these rule changes are not a deviation from the approach in the USPTO Code. The Office will continue to assess the need for CLE reporting requirements and may revisit this issue in the future.

Comment 5: A comment noted that the USPTO does not provide for or enforce CLE requirements on practitioners, and suggested that the

CLE requirements are therefore in the exclusive jurisdiction of the States.

Response to Comment 5: The Office appreciates the comment and confirms that it is not implementing a CLE reporting requirement at this time. However, a practitioner must maintain competence and be informed of updates in the law. *See* § 11.101; *see also* ABA Model Rule 1.1, cmts. 5 and 8 (2012). To maintain competence, the completion of CLE courses may be helpful.

Comment 6: Two commenters noted that the Office should adopt the August 2012 changes to the ABA Model Rules.

Response to Comment 6: The Office appreciates the comments and is adopting some of the ABA's August 2012 Model Rule changes. The Office examined each of the ABA Model Rule August 2012 changes individually and decided to adopt only the minor technical changes at this time. The Office did not adopt substantive changes as most States have not yet done so. The Office will continue to evaluate the ABA Model Rule changes and adopt them as appropriate. These technical changes are reflected in §§ 11.1 (changing "email" to "electronic communications" in the definition of "writing"), 11.404 (adding "or electronically stored information" to paragraph (b)), and 11.503 (changing "Assistants" to "Assistance" in the heading).

Comment 7: A comment compared a particular State's Rules of Professional Conduct with the USPTO Rules and noted differences between them.

Response to Comment 7: The Office indicated in the preamble to the Notice of Proposed Rulemaking that the USPTO Rules are not identical to every State's rules because each State adopts its own ethics rules.

Comment 8: A comment noted that the Office should present a "default jurisdiction" that would provide a body of case law for guidance since not all States have adopted all of the ABA Model Rules and thus some states may have differences in case law.

Response to Comment 8: The Office appreciates the comment's suggestion to specify a "default jurisdiction" since many States may have different interpretations of the ABA Model Rules based upon whether they were adopted in whole or part, or for other reasons. However, the Office declines to choose a State as a "default jurisdiction" as Congress has bestowed upon the Office the authority to govern the recognition and conduct of agents, attorneys and others before the Office and so the Office is its own jurisdiction. *See* 35 U.S.C. 2(b)(2)(D) and 32; *see also In re Peirce*, 128 P.3d 443, 444 (Nev. 2006) (concluding that the USPTO is "another jurisdiction"). The Office relies on the provisions adopted, and also refers practitioners to helpful information provided by the ABA Model Rule Comments and Annotations. Additionally, opinions and case law from adopting jurisdictions may be a useful tool in interpreting the rules while a larger body of USPTO-specific precedent is established. State case law and opinions are not binding precedent on the Office.

Comment 9: A comment suggested that the term "law firm" be changed to "practitioner's firm" in § 11.503(c)(2) because patent agents may not be able to form "law firms" under State law.

Response to Comment 9: The Office is not adopting this suggestion as the definition of "firm" or "law firm" in § 11.1 currently includes, among other things, patent agents practicing patent law in a professional corporation or other association.

Comment 10: Commenters suggested that the Office should adopt the ABA Model Rule Comments and Annotations as binding to interpret the USPTO Rules, noting that four jurisdictions have adopted their own unique comments, six have declined to adopt comments, and the rest have adopted the ABA Model Rule Comments.

Response to Comment 10: The Office appreciates the comment and notes that the Office has recognized the ABA Model Rule Comments and Annotations as useful information for practitioners.

Comment 11: A comment noted that several generally understood terms should be explicitly defined.

Response to Comment 11: The Office has reviewed the suggested terms and is not defining terms that are generally understood. In addition, the Office has left certain terms, such as "highest authority," as used in § 11.113, undefined because the definition is fact-specific and depends on the structure of the organization. Practitioners may refer to the Comments and Annotations to the ABA Model Rules for useful information.

Comment 12: Comments requested clarification as to why ABA Model Rule 6.1 (Voluntary Pro Bono Publico Service) and ABA Model Rule 6.5 (Nonprofit and Court Annexed Limited Legal Services Programs), both covering pro bono legal services, were not included in this proposal.

Response to Comment 12: While the Office encourages practitioners to provide pro bono services, the Office has declined to adopt ABA Model Rules 6.1 and 6.5. As many practitioners are members of their respective State bars, many of them will continue to provide low and no cost services to the public. The Leahy-Smith America Invents Act ("AIA") encourages the USPTO Director to "work with and support intellectual property law associations across the country in the establishment of pro bono programs designed to assist financially under-resourced independent inventors and small businesses." AIA, Public Law 112–29, § 32, 125 Stat. 340, § 32 (2011). The USPTO established a Patent Ombudsman Program to provide support and services to small businesses and independent inventors in patent filing. The program assists applicants or their representatives with issues that arise during patent application prosecution and is available at *http://www.uspto.gov/patents/ombudsman.jsp*. The Office has also worked with multiple local bar associations across the United States and assisted in the development of a portal that serves as a "clearinghouse" for pro bono services and is operated by the Federal Circuit Bar Association. More information about this program is available at *http://www.fedcirbar.org/olc/pub/LVFC/cpages/misc/pto.jsp*. In addition, inventors are able to seek pro bono services from particular law schools that have been accepted into the USPTO Law School Clinic Certification Pilot Program. More information about this program is available at *http://www.uspto.gov/ip/boards/oed/practitioner/agents/law_school_pilot.jsp*. Thus, the Office already broadly supports and encourages pro bono services and does not see a need at this time to adopt a mandatory requirement for practitioners.

Comment 13: A comment suggested that § 11.1 should be amended to include a definition for "material fraud" to determine the USPTO's obligations under the AIA.

Response to Comment 13: The Office is not adopting the suggestion to add a definition of "material fraud" as the term does not appear in this final rule.

Comment 14: A comment suggested that § 11.1 should be amended so that the definition of "practitioner" includes quasi-judicial officials.

Response to Comment 14: Section 11.1 defines "practitioner" as: "(1) An attorney or agent registered to practice before the Office in patent matters, (2) An individual authorized under 5 U.S.C. 500(b), or otherwise as provided by § 11.14(a), (b), and (c) of this subchapter, to practice before the Office in trademark matters or other non-patent matters, or (3) An individual authorized to practice before the Office in a patent case or matters under

§ 11.9(a) or (b)." The changes to the definition of "practitioner" clarify what has been the practice before the Office and the Office does not propose to expand the current use of the term. The Office is not adopting the comment's suggestion, as examiners and other persons in quasi-judicial roles who do not represent others before the Office are not automatically considered practitioners under the USPTO Rules merely because of their quasi-judicial role.

Comment 15: A comment suggested removing the intent requirement from the definition of a "signed" writing.

Response to Comment 15: The Office is not adopting this suggestion as a signature requires intent. *See* 1 U.S.C. 1 ("'signature' or 'subscription' includes a mark when the person making the same intended it as such").

Comment 16: A comment requested clarification as to whether USPTO employees who have registration numbers are considered practitioners.

Response to Comment 16: The definition of "practitioner" under § 11.1 includes USPTO employees who are registered to practice before the Office, or otherwise meet the definition under paragraph (2) or (3), and are administratively inactive. Such practitioners are subject to the disciplinary jurisdiction of the Office. 37 CFR 11.19(a). This is not a change from the current rules.

Comment 17: A comment noted that certain practitioners may be absolved of responsibility merely because of their status as a principal and not a partner.

Response to Comment 17: The Office appreciates the opportunity to clarify this situation by noting that a "partner," as defined in the rules, includes "a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law." Under § 11.501, practitioners with managerial authority within a firm are to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all practitioners in the firm will conform to the USPTO Rules. This includes lawyers who have intermediate managerial responsibilities in a firm. *See, e.g.,* ABA Model Rule 5.1, cmt. 1 (2012).

Comment 18: A comment suggested that the use of the term "party" in § 11.2(e) would include third parties. Under this definition, the commenter suggested that a grievant may be able to claim party status and participate in disciplinary investigations or petition for review of decisions.

Response to Comment 18: The Office disagrees with this comment. In keeping with other jurisdictions and the practice of the Office, a person who files a grievance about a practitioner is not considered a party to any resulting disciplinary matter. *See, e.g., In re Request for Investigation of Attorney,* 867 NE.2d 323 (Mass. 2007) (holding that a grievant has no cause of action arising out of disciplinary counsel's decision to close file). The Office amends the preamble language for § 11.2(e) to provide further clarification.

Comment 19: A comment suggested that § 11.32 should be amended to include specific language about the OED Director's discretionary authority in recommending settlement and issuing warnings.

Response to Comment 19: The Office is not adopting the suggested changes as they would limit the OED Director's discretion in actions after the Committee on Discipline has made a probable cause determination. In addition, the disposition authority of the OED Director is presently listed in § 11.22(h). The Office is adopting the rule as proposed which allows the OED Director discretion to recommend settlement, take no action, issue warnings, or take other actions as appropriate.

Comment 20: A comment suggested the adoption of ABA Model Rule 1.2(b) regarding a practitioner's endorsement of a client's views or activities.

Response to Comment 20: The Office is declining to enact a rule concerning the endorsement of a client's view as the Office believes the addition of such language in the rule is unnecessary. By declining to adopt this Rule, the USPTO is not implying that a practitioner's representation of a client constitutes an endorsement of the client's political, economic, social, or moral views or activities.

Comment 21: A comment stated that § 11.104 should be amended to include a provision that would allow a client to opt-out of receiving notifications of Office communications and solely rely on the practitioner's judgment.

Response to Comment 21: The Office appreciates this comment. Section 11.104 requires a practitioner to keep clients reasonably informed of a matter, which allows for flexibility in client information exchanges. What is reasonable will depend on the circumstances, including the client's request.

Comment 22: Several commenters raised concerns about the interaction of the duty of disclosure provisions, such as 37 CFR 1.56, and a practitioner's duty of confidentiality under § 11.106. Specifically, the comments raised concerns about the balance between the practitioner's duty to disclose information to the Office and the duty to protect confidential information of third parties, including that of other clients.

Response to Comment 22: The Office appreciates the comment. Sections 11.106(a) and (b) generally permit a practitioner to reveal confidential information under certain circumstances. *See, e.g.,* ABA Model Rule 1.6, cmt. 12 (2012) (if other law supersedes the rule, (b)(6) permits disclosure necessary to comply with the law); *see also* ABA Model Rule 1.6 annot. subsection (b)(6) ("the required-by-law exception may be triggered by statutes and administrative agency regulations"); N.C. Ethics Op. 2005–9 (2006) (lawyer for public company may reveal confidential information about corporate misconduct to SEC under permissive-disclosure regulation authorized by Sarbanes-Oxley Act, even if disclosure would otherwise be prohibited by state's ethics rules). Additionally, Section 11.106(c) states that "[a] practitioner shall disclose to the Office information necessary to comply with applicable duty of disclosure provisions" and is provided to make clear that the duty of disclosure is mandatory, not optional. Section 11.106(c) merely continues the current duty of disclosure provision set forth in 37 CFR 10.23(c)(10). *See, e.g.,* Manual of Patent Examining Procedure, 8th Ed., Rev. 9 (Aug. 2012) Ch. 2000. While paragraph (c) does not impose a new requirement, the express provision may be helpful in responding to any allegation of an ethical violation before a State bar in a situation where the practitioner engaged in particular conduct to comply with this USPTO Rule.

The comments also suggest that a practitioner's representation of one client could be directly adverse to another client in some circumstances. However, the restrictions on conflicts of interest that may appear between clients would generally prevent a practitioner from accepting clients who may have potentially adverse interests. *See* §§ 11.107, 11.108. In certain situations a practitioner may seek to withdraw from representation under § 11.116 to avoid a conflict of interest.

Comment 23: Commenters raised concerns about the elimination of ABA Model Rule 1.8(j) that prohibits a lawyer from having sexual relations with a client.

Response to Comment 23: The Office appreciates the comment regarding ABA Model Rule 1.8(j). Because of a

practitioner's fiduciary duties to a client, combining a professional relationship with any intimate personal relationship may violate the USPTO Rules concerning conflict of interest and impairment of the judgment of both practitioner and client. *See, e.g.,* §§ 11.107–11.109.

Comment 24: Commenters noted that the proposed rules delete 37 CFR 10.64, which contained a provision that allowed a practitioner to advance any fee required to prevent or remedy abandonment by reason of an act or omission attributable to the practitioner. Section 11.108(e) mentions "pending or contemplated litigation," but not "proceedings before the Office" as in § 11.108(i).

Response to Comment 24: The Office appreciates the comment and is adding "proceedings before the Office" to § 11.108(e). An added provision, namely § 11.108(e)(4), ensures that a practitioner may advance fees to prevent or remedy abandonment attributable to the practitioner. This is consistent with the intent of § 11.108(e) as set forth in the preamble statements of the Notice of Proposed Rulemaking. *See* 77 FR 64193.

Comment 25: A comment suggested that § 11.108(e) should be amended to exclude a non-paying client where a practitioner has already paid an Office fee or cost for such non-paying client.

Response to Comment 25: The Office is adopting an amendment to clarify that advancement of Office fees or costs required by law is permissible, in accord with 37 CFR 10.64(b), provided the client remains ultimately liable for such expenses. Also, in accord with 37 CFR 10.64(b), advancement of fees or costs in order to prevent or remedy abandonment of applications by acts or omissions of the practitioner and not the client is also permissible, whether or not the client is ultimately liable for such fees. *See generally* ABA Model Rule 1.8, cmt. 10 (2012).

Comment 26: A comment suggested expanding the ability of a practitioner to take an interest in a proceeding by adding to § 11.108(i)(3) the following language: "or accept an interest in an entity that directly or indirectly owns the patent as part or all of his or her fee."

Response to Comment 26: Section 11.108(i)(3) allows practitioners to accept an interest in a patent as part or all of his or her fee. The suggestion of expanding the express allowance to include entities is not adopted as the USPTO Rules already permit certain business transactions with a client. *See* § 11.108. However, many transactions would be subject to other rules and requirements in place to protect clients. *See* §§ 11.108(a) and (i), 11.105; *see also* ABA Model Rule 1.5, cmt. 4 (2012).

Comment 27: A comment suggested expanding § 11.108(i)(3) by adding the phrase "or patent application" to a "practitioner's interest in a patent" because not all interests are based upon issued patents.

Response to Comment 27: The Office appreciates this comment and is adopting this change in § 11.108(i)(3) to better reflect a practitioner's ability to acquire interests in patent applications.

Comment 28: A comment noted that the ability to take an interest in a patent under § 11.108(i)(3) should still subject the practitioner to paragraph (a) of that section.

Response to Comment 28: The Office appreciates the comment and notes that practitioners are subject to all of the provisions of § 11.108. The Office is adopting language to clarify that practitioners who take an interest in a patent or patent application, as part of or all of their fee, are still subject to the conflict of interest provisions of § 11.108, which prohibit business transactions adverse to a client unless certain conditions are met.

Comment 29: A comment requested clarification as to whether § 11.108(a) would prohibit a practitioner from owning investment vehicles such as mutual funds or IRA holdings which may include stock or securities in a company that competes with the practitioner's client.

Response to Comment 29: The Office appreciates this comment and notes that a practitioner is prohibited from representing a client if the representation will be materially limited by the practitioner's own interests, unless the practitioner reasonably believes that the representation will not be adversely affected and the client provides informed consent. § 11.107(a)(2) and (b). The Office notes, for example, that a diversified mutual fund would ordinarily not be considered an interest adverse to a client under the USPTO Rules. Thus, practitioners would be required to review their holdings and consider whether their duty of loyalty would be compromised, and they may be required to discuss the matter with their clients.

Comment 30: A comment suggested that the screening provisions under § 11.110(a)(2) are more extensive than those under § 11.112(c), and thus § 11.112(c) should be adopted for imputed conflicts among practitioners.

Response to Comment 30: The Office appreciates the comment and is removing the requirements to provide certifications of compliance from § 11.110(a)(2) by deleting paragraph (iii). The new language provides less burdensome screening requirements for all practitioners while ensuring proper notice is given to former clients.

Comment 31: Commenters stated that the Office should adopt ABA Model Rule 1.11 regarding conflicts of interest for former and current government employees because a special rule is not needed for Federal government employees.

Response to Comment 31: The Office appreciates the comments. However, § 11.111 states that "[a] practitioner who is a former or current Federal government employee shall not engage in any conduct which is contrary to applicable Federal ethics laws, including conflict of interest statutes and regulations of the department, agency or commission formerly or currently employing said practitioner." This section incorporates existing requirements addressing the unique situations affecting Federal government employees. *See, e.g.,* 18 U.S.C. 207. The Office declines to create an additional set of rules for Federal government employees.

Comment 32: A comment suggested that the USPTO adopt small deviations from the ABA Model Rules for Client Trust Account Records by not requiring practitioners to maintain copies of cancelled checks.

Response to Comment 32: The Office has reviewed each of the ABA Model Rules for Client Trust Account Records individually, along with the proposed changes, and is not adopting the suggested change. The final rule upholds the standards in the ABA Model Rules and is consistent with the Comments and Annotations. Section 11.115 allows a practitioner to maintain physical or electronic equivalents of all cancelled checks. *See, e.g.,* ABA Model Rules for Client Trust Account Records Rule 1, cmt. 2 (2010) ("Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based Web sites. It is the [practitioner's] responsibility to download electronic images"). As noted in the preamble, records stored off-site must be readily accessible to the practitioner and the practitioner should be able to produce and print them upon request.

Comment 33: Several commenters disagreed with the deletion of the latter half of ABA Model Rule 2.1 in § 11.201, which allows practitioners, in rendering advice, to refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to a client's situation.

Response to Comment 33: The Office appreciates the comments. "In rendering legal advice, a [practitioner] may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation." ABA Model Rule 2.1. The Office agrees with the ABA and is incorporating this provision into the final rule.

Comment 34: A comment requested that the Office adopt ABA Model Rule 2.3(c) without modification.

Response to Comment 34: The Office appreciates the comment and had proposed to tailor ABA Model Rule 2.3(c) to the specific practice before the Office. In light of the ABA language having the same effect, the Office is adopting ABA Model Rule 2.3(c), without modification, in § 11.203(c).

Comment 35: A comment requested that the Office clarify § 11.302 to ensure that seeking extensions of time would not be sanctionable behavior under this rule.

Response to Comment 35: The Office appreciates this comment and notes that the Office does not expect a change from the current practice. A practitioner who fails to make reasonable efforts to expedite proceedings, as circumstances may dictate, may be subject to discipline. What efforts may be reasonable depend on the circumstances.

Comment 36: A comment requested clarification as to who is referred to as having otherwise disclosed such authority in § 11.303(a)(2) "if such authority is not otherwise disclosed" with respect to *ex parte* proceedings.

Response to Comment 36: A practitioner has the duty to disclose legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client, unless it has already been disclosed. Awareness of disclosures by the Office or persons acting on behalf of an applicant in an *ex parte* proceeding before the Office, in both the same or related proceedings, may assist practitioners in complying with this provision.

Comment 37: Commenters questioned the scope of "directly adverse" as it relates to § 11.303(a)(2).

Response to Comment 37: The Office appreciates the comment and notes that the scope of what is directly adverse to the position of the client depends on the facts of each case. *See, e.g.,* ABA Model Rule 3.3, annot. Subsection (a)(2) (2012).

Comment 38: Several commenters suggested a revision to the requirement to disclose confidential client information under § 11.303(e) to address concerns about unknowingly violating the duty of disclosure provisions.

Response to Comment 38: The Office appreciates the comment but is not amending the language. The rule carries forward a practitioner's duty of disclosure requirements. *See, e.g.,* 37 CFR 1.56, 1.555(a), 1.740(a)(13), 1.765(c) and (d), 1.933(a), Manual of Patent Examining Procedure, 8th Ed., Rev. 9 (Aug. 2012) Ch. 2000; *see also* 37 CFR 10.23(c)(10).

Comment 39: A comment suggested clarification as to whether *ex parte* communication, in the course of patent prosecution, with USPTO examiners and other officials, would be prohibited by § 11.305..

Response to Comment 39: The Office appreciates this comment. Nothing in this rule would prevent *ex parte* communication that is authorized by law, rule or court order, in an *ex parte* proceeding.

Comment 40: A comment urges the adoption of ABA Model Rule 3.6 with regard to trial publicity.

Response to Comment 40: The Office appreciates this comment and is adopting ABA Model Rule 3.6 as § 11.306 except for the provisions related to criminal cases.

Comment 41: A comment noted that § 11.307 should be amended to allow a practitioner who is an inventor to act as an advocate in a proceeding where he would likely be called as a witness.

Response to Comment 41: The Office appreciates this comment. Consistent with existing practice, a co-inventor, who is also a practitioner, would not be disqualified from representing other co-inventors before the Office if the removal would cause the client substantial hardship, or if the testimony relates to an uncontested issue. However, a practitioner who is an inventor of a patent involved in litigation, and who might be called as a witness, should generally not act as an advocate in the matter.

Comment 42: Several commenters suggested that the ability for a practitioner to be called as a witness under § 11.307 could create problems between the practitioner and client when the testimony relates to a duty of disclosure.

Response to Comment 42: The Office appreciates the comment and will follow the ABA Model Rule by deleting paragraph (a)(4). A practitioner's submission of information disclosure statements and associated certifications ordinarily would fall under the exceptions in paragraphs (a)(1) or (a)(3).

Comment 43: A comment suggested that § 11.504 would prohibit a law firm that includes both lawyer-practitioners and lawyers who do not practice before the USPTO.

Response to Comment 43: The Office appreciates this comment and notes that § 11.504 does not prohibit the formation of a law firm that includes both lawyer-practitioners and lawyers who do not practice before the USPTO. The definition of "practitioner" includes individuals who are members in good standing of the bar of the highest court of a State. *See* § 11.1; 5 U.S.C. 500(b). Thus, firms consisting of lawyers who do not practice before the USPTO and practitioners are permitted under the USPTO Rules. This is not a departure from current practice.

Comment 44: A comment noted that the language of § 11.505(c), which discusses the unauthorized practice of law, may inadvertently cause confusion as to members of the bar who are placed on inactive status, but not suspended.

Response to Comment 44: The Office appreciates the comment and is amending the rule to more closely follow ABA Model Rule 5.5(a) by simplifying the language. The Office believes that the ABA Model Rule encompasses the language of § 11.505(b) through (f), as proposed, and makes clear these activities are a violation of the rule. The Office therefore concludes that expressly listing these activities in the final rule is unnecessary. The final rule states that a practitioner shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. For purposes of this rule, the USPTO is a jurisdiction. *See, e.g., In re Peirce,* 128 P.3d 443, 444 (Nev. 2006) (concluding that "another jurisdiction" includes the USPTO). Courts have long held that registered practitioners who practice before the Office are practicing law. *See, e.g., Sperry* v. *Florida,* 373 U.S. 379 (1963); *Sperti Prods., Inc.* v. *Coca-Cola Co.,* 262 F. Supp. 148 (D. Del. 1966). In addition, the Office notes that those not recognized to practice before the Office are expressly prohibited from holding themselves out as so recognized. *See* 35 U.S.C. 33.

Comment 45: One comment indicated that § 11.703(d), which allows practitioners to participate with a prepaid or group legal service plan operated by an organization that uses in-person or telephone solicitation of memberships or subscriptions, may result in harm to the public because it could provide an advantage to certain non-practitioner entities over competent professionals. The comment reasoned that law firms are prohibited by the constraints of § 11.107(a) while certain non-practitioner entities are not. The

comment suggested that the rules reflect the "opposite approach" which would protect the public from unskilled and underpaid novice practitioners employed by such non-practitioner entities. The comment suggested that uninformed potential clients could be swayed by the advertising of such non-practitioner entities and may receive poor quality representation by such inexperienced practitioners.

Response to Comment 45: The Office appreciates the comment regarding § 11.703(d), which is wholly based on ABA Model Rule 7.3. The Office declines to alter the proposed rule in light of this comment. The regulation of non-practitioner entities that do not appear before the Office is outside the scope of these rules. The Office notes that practitioners of all experience levels should exercise diligence and professional judgment when associating with a non-practitioner entity operating a group or prepaid legal services plan to ensure that plan sponsors operate a legal services plan that does not cause the practitioner to violate applicable ethics rules, including § 11.107(a). *See, e.g.,* ABA Model Rule 7.3, cmts. 7 and 9 (2012).

Comment 46: The Office received statements about § 11.801(d) from four commenters. One commenter expressed that § 11.801(d) is not part of the ABA Model Rules and does not define "failure to cooperate." The commenter also urged the Office to clarify whether the assertion of constitutional or other privileges might be considered a failure to cooperate. Another commenter believed that § 11.801(d) fails to provide appropriate protections for client confidences and further stated that the rule appears unnecessary in light of § 11.801(c). Another commenter requested further explanation of the activities covered and prohibited by § 11.801(d) that are not already covered by the other parts of the rule. The commenter also asked whether a different standard is intended for § 11.801(d) than for the other parts of the rule, and suggested that § 11.801(d) be deleted as unnecessarily duplicative if a single standard is intended. The final commenter noted that neither the ABA Model Rules nor the jurisdiction where the practitioner is licensed to practice non-patent law imposed the requirement set forth under § 11.801(d) and asked questions regarding the scope of the rule.

Response to Comment 46: The Office appreciates these comments and the chance to clarify that the duty to cooperate with OED is not new. Section 11.801(d), now included in 11.801(b), returns the duty to cooperate to its correct location in the Office's substantive ethics rules. 37 CFR 10.131 expressly included the duty to cooperate, and 37 CFR 10.23(c)(16) explained it was a violation of the USPTO Code to fail to do so. Section 11.801(b) makes certain that practitioners are aware of their duty to cooperate with OED.

The Office disagrees that the scope of updated § 11.801(b) needs to be revised. The requirements of the rule are not new and practitioners may review Final Orders where the USPTO Director imposed discipline for a failure to cooperate under the Office's previous iteration of its rules. *See, e.g., In re Lawrence Y.D. Ho,* Proceeding No. D09–04 (USPTO, Jan. 30, 2009). In addition, because there are at least seven jurisdictions that adopted the ABA Model Rules and that have ethics rules regarding cooperating with the respective jurisdiction's disciplinary authority, disciplinary decisions from those jurisdictions (Louisiana, Massachusetts, New Mexico, Ohio, Oregon, Virginia, and Wisconsin) can be helpful to practitioners. Hence, pursuant to § 11.801(b), a practitioner will be obligated to respond to a request to explain information submitted; to permit the inspection of business records, files, accounts, and other things; and to furnish written releases or authorizations if needed by OED to obtain documents or information from third parties.

A practitioner's duty to cooperate fully with OED is vital to maintaining the integrity of the legal profession, which is an important duty owed by a practitioner to the public, the bar, the profession, and the Office. *See, e.g., In re Riddle,* 857 P.2d 1233, 1235–36 (Ariz. 1993) ("Respondent's failure to cooperate with self-regulating disciplinary system of legal profession violates one of attorney's most fundamental duties as professional to maintain integrity of profession."); *In re Watt,* 701 A.2d 1011, 1012 (R.I. 1997) (an attorney's failure to cooperate with the Office of Disciplinary Counsel "has a corrosive effect on the confidence that the public must have in the legal profession's ability to regulate the conduct of its members"). A failure to cooperate with the OED adversely reflects on a practitioner's fitness to practice before the Office and is prejudicial to the administration of justice. *See, e.g., In re Lawrence Y.D. Ho,* Proceeding No. D09–04 (USPTO, Jan. 30, 2009) (Respondent disciplined for conduct adversely reflecting on his fitness to practice before the Office and conduct prejudicial to the administration of justice predicated, in part, on not cooperating with OED investigation of his alleged misconduct); *accord, e.g., State Bar of Nevada* v. *Watkins,* 655 P.2d 529, 530–531 (Nev. 1982) ("It is also the duty of an attorney to cooperate in investigations of alleged professional misconduct, and it may be deemed an adverse reflection on his fitness to practice law, and conduct prejudicial to the administration of justice when he refuses to answer letters from Disciplinary personnel or otherwise fails to cooperate."). A practitioner's compliance with the duty to cooperate has recently become even more essential to maintaining the integrity of the profession in light of the shorter statutory time allowed for the OED Director to complete a full and fair investigation of a practitioner's alleged misconduct. *See* 37 CFR 11.34(d) (disciplinary complaints are to be filed within one year after the date on which the OED Director receives a grievance forming the basis of the complaint).

The aforementioned examples are illustrative, not exhaustive, of the activities covered under § 11.801(b). Those examples also support the Office's disagreement with comments stating that § 11.801(b) is unnecessary because the other provisions of § 11.801(b) include the duty to cooperate with the OED. Including this prohibition in the USPTO Rules leaves no question about a practitioner's duty to cooperate. Section 11.801(b) is consistent with § 11.106(b) regarding when a practitioner may reveal information relating to the representation of a client. Nothing in § 11.801(b) should be read to diminish any privilege or constitutional protections afforded to a practitioner in a USPTO disciplinary proceeding. Practitioners are to recognize, however, that while a privilege against self-incrimination may generally apply to attorney disciplinary proceedings, *see Spevack* v. *Klein,* 385 U.S. 511 (1967), an adverse inference for refusing to cooperate or testify may be drawn in non-criminal proceedings, *see Baxter* v. *Palmigiano,* 425 U.S. 308, 316 (1976). USPTO disciplinary proceedings are non-criminal proceedings. Thus, § 11.801 has been organized to provide some clarity, however the text of the final rule is the same as that of the proposed rule.

Comment 47: A comment requested clarification as to the appropriate authority under 37 CFR 11.803(b) for reporting violations of judicial conduct rules.

Response to Comment 47: The Office appreciates this comment and notes that the appropriate authority to report judicial misconduct would depend on

the situation and jurisdiction. If such violations are within the jurisdiction of OED, they must be reported in writing to the OED Director. *See* 35 U.S.C. 11.19(a) (disciplinary jurisdiction); 37 CFR 1.1(a)(5) (contact information); *see also* ABA Model Rule 8.3, cmt. 3 (2012) (applying similar considerations for judicial misconduct as for attorney misconduct whereby "[a] report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances"). Practitioners should also consult their State bar rules and other authorities for additional reporting obligations that may apply.

Comment 48: A comment suggested that the Office remove § 11.804(h) as overreaching beyond the scope of the Office's jurisdiction.

Response to Comment 48: The Office appreciates the comment and has preserved the current requirements under 37 CFR 10.23(c)(5), through which it currently pursues reciprocal discipline against practitioners, in § 11.804(h) and has pursued reciprocal discipline proceedings against practitioners. *See, e.g., In re Tholstrup,* Proceeding No. D2012–33 (USPTO, Nov. 15, 2012). OED does not automatically seek reciprocal discipline and the USPTO does not automatically impose reciprocal discipline. Practitioners may challenge the imposition of reciprocal discipline as set forth in 37 CFR 11.24. Additionally, trademark attorneys are required to maintain good standing in at least one State bar. 37 CFR 11.14(a). The Office believes that failure to maintain good standing in a State bar, among other requirements, creates a need to recognize public discipline in other jurisdictions. Other federal jurisdictions also recognize the importance of reciprocal discipline. *See generally Gadda* v. *Ashcroft,* 377 F.3d 934 (9th Cir. 2004). The Office further notes that many rules were reserved in favor of the ability to institute reciprocal discipline based upon other jurisdictions.

Comment 49: The Office received two comments about § 11.804(i). One commenter recommended that the Office consider adopting explanatory and illustrative comments identical to the ABA Model Rule Comments. The commenter also stated that § 11.804(i) provides practitioners with no specific guidance about what is conduct that adversely reflects on the fitness to practice and recommended deleting the rule in the absence of adoption of the explanatory comment. A second commenter expressed that § 11.804(i) is vague and appears to be overreaching and recommended that it be removed.

Response to Comment 49: Section 11.804(i) is included in the new USPTO Rules so that practitioners know it continues to be misconduct to engage in conduct that adversely reflects on the practitioner's fitness to practice before the Office. The Office believes that § 11.804(i), which is based upon 37 CFR 10.23(b)(6), covers more than illegal conduct and that there is sufficient guidance available to practitioners concerning the scope of § 11.804(i). For example, practitioners may review Final Orders where the USPTO Director imposed discipline based on a violation of 37 CFR 10.23(b)(6) for information regarding their obligations under § 11.804(i). Additionally, at least five states (Alabama, Kansas, Massachusetts, New York, and Ohio) that adopted the ABA Model Rules also adopted rules similar to § 11.804(i) that specifically proscribe engaging in other conduct that adversely reflects on the attorney's fitness to practice. The disciplinary decisions from those jurisdictions also provide useful information. Finally, the Office has recognized the ABA Model Rule Comments and Annotations as useful information.

TABLE 1—PRINCIPAL SOURCE OF SECTIONS 11.101 THROUGH 11.804

Section	Principal source
§ 11.101	MRPC 1.1.
§ 11.102	MRPC 1.2.
§ 11.103	MRPC 1.3.
§ 11.104	MRPC 1.4.
§ 11.105	MRPC 1.5.
§ 11.106(a), (b)	MRPC 1.6(a)–(b).
§ 11.106(c)	USPTO.
§ 11.107	MRPC 1.7.
§ 11.108	MRPC 1.8, USPTO.
§ 11.109	MRPC 1.9.
§ 11.110	MRPC 1.10.
§ 11.111	USPTO.
§ 11.112	MRPC 1.12.
§ 11.113	MRPC 1.13.
§ 11.114	MRPC 1.14.
§ 11.115(a)–(e)	MRPC 1.15(a)–(e).
§ 11.115(f)(1)	MRCTAR Rule 1.
§ 11.115(f)(2)	MRCTAR Rule 2.
§ 11.115(f)(3)	MRCTAR Rule 3.
§ 11.115(f)(4), (5)	USPTO.
§ 11.116	MRPC 1.16.
§ 11.117	MRPC 1.17, USPTO.
§ 11.118	MRPC 1.18.
§ 11.201	MRPC 2.1.
§ 11.203	MRPC 2.3.
§ 11.204	MRPC 2.4.
§ 11.301	MRPC 3.1.
§ 11.302	MRPC 3.2.
§ 11.303	MRPC 3.3, USPTO.
§ 11.304	MRPC 3.4.
§ 11.305	MRPC 3.5.
§ 11.306	MRPC 3.6.
§ 11.307	MRPC 3.7.
§ 11.309	MRPC 3.9.
§ 11.401	MRPC 4.1.
§ 11.402(a)	MRPC 4.2(a).
§ 11.402(b)	DCRPR 4.2(b).
§ 11.403	MRPC 4.3.
§ 11.404	MRPC 4.4.
§ 11.501	MRPC 5.1.
§ 11.502	MRPC 5.2.
§ 11.503	MRPC 5.3.
§ 11.504	MRPC 5.4; DCRPR 5.4(a)(5).
§ 11.505	MRPC 5.5(a).
§ 11.506	MRPC 5.6.
§ 11.507	MRPC 5.7.
§ 11.701	MRPC 7.1.
§ 11.702	MRPC 7.2.
§ 11.703	MRPC 7.3.
§ 11.704(a)	MRPC 7.4(a).
§ 11.704(b)	37 CFR 10.34.
§ 11.704(d)	MRPC 7.4(d).
§ 11.704(e)	USPTO.
§ 11.705	MRPC 7.5.
§ 11.801	MRPC 8.1, USPTO.
§ 11.802	MRPC 8.2.
§ 11.803	MRPC 8.3.
§ 11.804(a)–(f)	MRPC 8.4(a)–(f).
§ 11.804(g)	37 CFR 10.23(c)(19), 10.23(c)(20), 11.10(d).
§ 11.804(h)	37 CFR 10.23(c)(5), 11.24.
§ 11.804(i)	37 CFR 10.23(b)(6).
§ 11.901	USPTO.

Abbreviations:
DCRPR means the District of Columbia Court of Appeals Rules of Professional Conduct (2007).
MRPC means the Model Rules of Professional Conduct of the American Bar Association (2011).
MRCTAR means the Model Rules for Client Trust Account Records of the American Bar Association (2010).

Rulemaking Considerations

Regulatory Flexibility Act: The Deputy General Counsel for General Law, United States Patent and Trademark Office, has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this final rule will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). There were no public comments on the certification included with the proposed rule.

The primary effect of this rulemaking is not economic, but rather is to govern the conduct of practitioners in their interactions with their clients and with the Office.

The provisions of this rulemaking that may have a slight economic effect, such as record-keeping requirements, requirements to segregate client funds, and rules governing representation of

multiple entities, are consistent with the USPTO's former rules. The former USPTO Code and the new USPTO Rules apply to the approximately 41,000 registered patent practitioners currently appearing before the Office, as well as licensed attorneys practicing in trademark and other non-patent matters before the Office.

These conduct rules continue the fundamental requirements of the Office's prior conduct rules. The former rules have many broad canons and obligations that the rules fundamentally continue, though with greater specificity and clarity, and with some reorganization. The rules also have greater specificity and clarity as to allowed conduct. These final rules, like the former rules, codify many obligations that already apply to the practice of law under professional and fiduciary duties owed to clients. Because the provisions most likely to have an economic effect are already in place, these provisions do not contribute to the economic impact of this rulemaking.

Furthermore, for most practitioners, this rulemaking will reduce the economic impact of complying with the Office's professional responsibility requirements. Approximately 75 percent of registered practitioners are attorneys. The state bars of 50 U.S. jurisdictions, *i.e.*, the District of Columbia and 49 States, excluding California, have adopted rules based on the same ABA Model Rules on which USPTO Rules are based. Therefore, for most current and prospective practitioners, the USPTO Rules provide practitioners greater uniformity and familiarity with the professional conduct obligations before the Office and harmonize the requirements to practice law before the Office and other jurisdictions. Moreover, for some provisions of this rulemaking, such as the record-keeping requirements in § 11.115(f)(4) and (f)(5), the rules explicitly state that an attorney or agent (employed in the U.S. by a law firm) that complies with the state in which he or she practices will be deemed in compliance with the Office's requirements as well. Accordingly, this rulemaking streamlines many practitioners' obligations and thus reduces the administrative burden of compliance.

Accordingly, this rulemaking does not have a significant economic effect on a substantial number of small entities.

Executive Order 12866: This final rule has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

Executive Order 13132: This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes in this rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this action is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995: The changes in this action do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

National Environmental Policy Act: This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

Paperwork Reduction Act: This rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995

(PRA) (44 U.S.C. 3501 *et seq.*). Collection of information activities involved in this rulemaking have been reviewed and approved by OMB under OMB control number 0651–0017. There were no public comments received on the PRA information provided with the proposed rule.

The title, description, and respondent description of the currently approved information collection 0651–0017 are shown below with an estimate of the annual reporting burdens. Included in this estimate is the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this rulemaking is to registered practitioners and attorneys practicing before the Office in trademark and other non-patent matters.

OMB Number: 0651–0017

Title: Practitioner Records Maintenance and Disclosure Before the Patent and Trademark Office.

Form Numbers: None.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, Federal Government, and state, local, or tribal governments.

Estimated Number of Likely Respondents: 10,766.

Estimated Total Annual Burden Hours: 11,926 hours.

Needs and Uses: The information in this collection is necessary for the United States Patent and Trademark Office to implement Federal statutes and regulations. *See* 35 U.S.C. 2(b)(2)(D) and 35 U.S.C. 32. These rules require that registered practitioners and attorneys who appear before the Office maintain complete records of clients, including all funds, securities and other properties of clients coming into his/her possession, and render appropriate accounts to the client regarding such records, as well as report violations of the rules to the Office. Practitioners are mandated by the rules to maintain proper documentation so that they can fully cooperate with an investigation in the event of a report of an alleged violation and that violations are prosecuted as appropriate. The Office has determined that the record keeping and maintenance of such records are excluded from any associated PRA burden as these activities are usual and customary for practitioners representing clients. 5 CFR 1320.3(b)(2). Additionally, in the case of most attorney practitioners, any requirements for collection of information are not presumed to impose a Federal burden as these requirements are also required by a unit of State or local government, namely State bar(s), and would be required even in the absence of any Federal requirement. 5 CFR 1320.3(b)(3). These rules also require, in certain instances, that written consents or certifications be provided. Such consents or certifications have been determined not to constitute information under 5 CFR 1320.3(h)(1).

First, the Office estimates that it will take an individual or organization approximately three hours, on average, to gather, prepare and submit an initial grievance alleging and supporting a violation of professional conduct. The Office estimates that approximately 200 grievances will be received annually from such respondents. The requirements of 5 CFR part 1320 do not apply to collections of information by the Office during the conduct of an investigation involving a potential violation of Office professional conduct rules. 5 CFR 1320.4(a)(2). Second, the Office estimates that non-attorney practitioners may, on average, incur a total of thirty minutes of annual burden to notify senders of documents relating to the representation of a client that were inadvertently sent. § 11.404(b). Third, the Office estimates that non-attorney practitioners, may, on average, incur a total of thirty minutes of annual burden to comply with the § 11.703(c) disclosure requirements relating to soliciting professional employment. Of the approximately 41,000 registered practitioners, 10,526 are non-attorneys and therefore considered likely respondents under the PRA for purposes of this information collection. Fourth, the Office estimates that suspended and excluded practitioners will be subject to approximately 20 hours of burden in complying with the record keeping maintenance requirements. The Office estimates that approximately 40 practitioners will be subject to these record keeping maintenance requirements.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Parts 2 and 7

Administrative practice and procedure, Trademarks.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority of 35 U.S.C. 2(b)(2)(A) and (D), and 35 U.S.C. 32 the United States Patent and Trademark Office amends 37 CFR parts 1, 2, 7, 10, 11, and 41 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.4 is amended to revise paragraph (d)(4)(i) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d) * * *

(4) *Certifications*—(i) *Section 11.18 certifications.* The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this subchapter. Violations of § 11.18(b)(2) of this subchapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 11.18(c) of this subchapter. Any practitioner violating § 11.18(b) of this subchapter may also be subject to disciplinary action. *See* § 11.18(d) of this subchapter.

* * * * *

■ 3. Section 1.21 is amended to remove and reserve paragraphs (a)(7) and (a)(8) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *

(7)–(8) [Reserved]

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 4. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 5. Section 2.2 is amended to revise paragraph (c) to read as follows:

§ 2.2 Definitions.

* * * * *

(c) *Director* as used in this chapter, except for part 11, means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

* * * * *

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 6. The authority citation for 37 CFR Part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 7. Section 7.25 is amended to revise paragraph (a) to read as follows:

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.22–2.23, 2.130–2.131, 2.160–2.166, 2.168, 2.173, 2.175, 2.181–2.186 and 2.197, all sections in part 2 and all sections in part 11 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

* * * * *

PART 10 [Removed and reserved]

■ 8. Part 10 is removed and reserved.

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 9. The authority citation for 37 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41.

■ 10. Amend § 11.1 to remove the definitions of "mandatory disciplinary rule" and "matter;" revise the definitions of "fraud or fraudulent" and "practitioner;" and add in alphabetical order the definitions of "confirmed in writing," "firm or law firm," "informed consent," "law-related services," "partner," "person," "reasonable belief or reasonably believes," "reasonably should know," "screened," "tribunal" and "writing or written" as follows:

§ 11.1 Definitions.

* * * * *

Confirmed in writing, when used in reference to the informed consent of a person, means informed consent that is given in writing by the person or a writing that a practitioner promptly transmits to the person confirming an oral informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the practitioner must obtain or transmit it within a reasonable time thereafter.

* * * * *

Firm or *law firm* means a practitioner or practitioners in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or practitioners employed in a legal services organization or the legal department of a corporation or other organization.

* * * * *

Fraud or *fraudulent* means conduct that involves a misrepresentation of material fact made with intent to deceive or a state of mind so reckless respecting consequences as to be the equivalent of intent, where there is justifiable reliance on the misrepresentation by the party deceived, inducing the party to act thereon, and where there is injury to the party deceived resulting from reliance on the misrepresentation. Fraud also may be established by a purposeful omission or failure to state a material fact, which omission or failure to state makes other statements misleading, and where the other elements of justifiable reliance and injury are established.

* * * * *

Informed consent means the agreement by a person to a proposed course of conduct after the practitioner has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

* * * * *

Law-related services means services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.

* * * * *

Partner means a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

Person means an individual, a corporation, an association, a trust, a partnership, and any other organization or legal entity.

Practitioner means:

(1) An attorney or agent registered to practice before the Office in patent matters,

(2) An individual authorized under 5 U.S.C. 500(b), or otherwise as provided by § 11.14(a), (b), and (c), to practice before the Office in trademark matters or other non-patent matters, or

(3) An individual authorized to practice before the Office in a patent case or matters under § 11.9(a) or (b).

* * * * *

Reasonable belief or *reasonably believes* when used in reference to a practitioner means that the practitioner believes the matter in question and that the circumstances are such that the belief is reasonable.

Reasonably should know when used in reference to a practitioner means that a practitioner of reasonable prudence and competence would ascertain the matter in question.

* * * * *

Screened means the isolation of a practitioner from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated practitioner is obligated to protect under these USPTO Rules of Professional Conduct or other law.

* * * * *

Tribunal means the Office, a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

* * * * *

Writing or *written* means a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and

executed or adopted by a person with the intent to sign the writing.

■ 11. Revise § 11.2(c), (d) and (e) to read as follows:

§ 11.2 Director of the Office of Enrollment and Discipline.

* * * * *

(c) *Petition to OED Director regarding enrollment or recognition.* Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director accompanied by payment of the fee set forth in § 1.21(a)(5)(i) of this chapter. Any such petition not filed within sixty days from the mailing date of the action or notice from which relief is requested will be dismissed as untimely. The filing of a petition will neither stay the period for taking other action which may be running, nor stay other proceedings. The petitioner may file a single request for reconsideration of a decision within thirty days of the date of the decision. Filing a request for reconsideration stays the period for seeking review of the OED Director's decision until a final decision on the request for reconsideration is issued.

(d) *Review of OED Director's decision regarding enrollment or recognition.* A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition shall seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5)(ii) of this chapter. By filing such petition to the USPTO Director, the party waives any right to seek reconsideration from the OED Director. Any petition not filed within thirty days after the final decision of the OED Director may be dismissed as untimely. Briefs or memoranda, if any, in support of the petition shall accompany the petition. The petition will be decided on the basis of the record made before the OED Director. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director shall not be submitted with the petition. An oral hearing will not be granted except when considered necessary by the USPTO Director. Any request for reconsideration of the decision of the USPTO Director may be dismissed as untimely if not filed within thirty days after the date of said decision. Only a decision of the USPTO Director regarding denial of a petition constitutes a final decision for the purpose of judicial review.

(e) *Petition to USPTO Director in disciplinary matters.* A party dissatisfied with any action or notice of any employee of the Office of Enrollment and Discipline during or at the conclusion of a disciplinary investigation shall seek review of the action or notice upon petition to the OED Director. A petition from any action or notice of the staff reporting to the OED Director shall be taken to the OED Director. A party dissatisfied with the OED Director's final decision shall seek review of the final decision upon petition to the USPTO Director to invoke the supervisory authority of the USPTO Director in appropriate circumstances in disciplinary matters. Any petition under this paragraph must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support of the petition must accompany the petition. Where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition. The OED Director may be directed by the USPTO Director to file a reply to the petition to the USPTO Director, supplying a copy to the petitioner. An oral hearing on petition taken to the USPTO Director will not be granted except when considered necessary by the USPTO Director. The filing of a petition under this paragraph will not stay an investigation, disciplinary proceeding, or other proceedings. Any petition under this part not filed within thirty days of the mailing date of the action or notice from which relief is requested may be dismissed as untimely. Any request for reconsideration of the decision of the OED Director or the USPTO Director may be dismissed as untimely if not filed within thirty days after the date of said decision. Only a decision of the USPTO Director regarding denial of a petition constitutes a final decision for the purpose of judicial review.

■ 12. Remove and reserve § 11.8(d) to read as follows:

§ 11.8 Oath and registration fee.

* * * * *

(d) [Reserved]

■ 13. Revise § 11.9(b) to read as follows:

§ 11.9 Limited Recognition in patent matters.

* * * * *

(b) A nonimmigrant alien residing in the United States and fulfilling the provisions of § 11.7(a) and (b) may be granted limited recognition if the nonimmigrant alien is authorized by the United States Government to be employed or trained in the United States in the capacity of representing a patent applicant by presenting or prosecuting a patent application. Limited recognition shall be granted for a period consistent with the terms of authorized employment or training. Limited recognition shall not be granted or extended to a non-United States citizen residing abroad. If granted, limited recognition shall automatically expire upon the nonimmigrant alien's departure from the United States.

■ 14. Revise § 11.11(a), (b), and (c), remove and reserve paragraphs (d)(2) and (d)(4), and revise paragraphs (d)(5), (d)(6), (e) and (f)(1) to read as follows:

§ 11.11 Administrative suspension, inactivation, resignation, and readmission.

(a) *Contact information.* (1) A registered practitioner must notify the OED Director of his or her postal address for his or her office, up to three email addresses where he or she receives email, and a business telephone number, as well as every change to any of said addresses or telephone number within thirty days of the date of the change. A registered practitioner shall, in addition to any notice of change of address and telephone number filed in individual patent applications, separately file written notice of the change of address or telephone number to the OED Director. A registered practitioner who is an attorney in good standing with the bar of the highest court of one or more States shall provide the OED Director with the State bar identification number associated with each membership. The OED Director shall publish from the roster a list containing the name, postal business addresses, business telephone number, registration number, and registration status as an attorney or agent of each registered practitioner recognized to practice before the Office in patent cases.

(2) A letter may be addressed to any registered practitioner, at the address of which separate notice was last received by the OED Director, for the purpose of ascertaining whether such practitioner desires to remain on the register. Any registered practitioner failing to reply and give any information requested by the OED Director within a time limit specified will be subject to administrative suspension under paragraph (b) of this section.

(b) *Administrative suspension.* (1) Whenever it appears that a registered practitioner or a person granted limited recognition under § 11.9(b) has failed to comply with § 11.8(d) or paragraph (a)(2) of this section, the OED Director shall publish and send a notice to the registered practitioner or person granted limited recognition advising of the noncompliance, the consequence of

being administratively suspended under paragraph (b)(5) of this section if noncompliance is not timely remedied, and the requirements for reinstatement under paragraph (f) of this section. The notice shall be published and sent to the registered practitioner or person granted limited recognition by mail to the last postal address furnished under paragraph (a) of this section or by email addressed to the last email addresses furnished under paragraph (a) of this section. The notice shall demand compliance and payment of a delinquency fee set forth in § 1.21(a)(9)(i) of this subchapter within sixty days after the date of such notice.

(2) In the event a registered practitioner or person granted limited recognition fails to comply with the notice of paragraph (b)(1) of this section within the time allowed, the OED Director shall publish and send in the manner provided for in paragraph (b)(1) of this section to the registered practitioner or person granted limited recognition a Rule to Show Cause why his or her registration or recognition should not be administratively suspended, and he or she no longer be permitted to practice before the Office in patent matters or in any way hold himself or herself out as being registered or authorized to practice before the Office in patent matters. The OED Director shall file a copy of the Rule to Show Cause with the USPTO Director.

(3) Within 30 days of the OED Director's sending the Rule to Show Cause identified in paragraph (b)(2) of this section, the registered practitioner or person granted limited recognition may file a response to the Rule to Show Cause with the USPTO Director. The response must set forth the factual and legal bases why the person should not be administratively suspended. The registered practitioner or person granted limited recognition shall serve the OED Director with a copy of the response at the time it is filed with the USPTO Director. Within ten days of receiving a copy of the response, the OED Director may file a reply with the USPTO Director that includes documents demonstrating that the notice identified in paragraph (b)(1) of this section was published and sent to the practitioner in accordance with paragraph (b)(1) of this section. A copy of the reply by the OED Director shall be served on the registered practitioner or person granted limited recognition. When acting on the Rule to Show Cause, if the USPTO Director determines that there are no genuine issues of material fact regarding the Office's compliance with the notice requirements under this section or the failure of the person to pay the requisite fees, the USPTO Director shall enter an order administratively suspending the registered practitioner or person granted limited recognition. Otherwise, the USPTO Director shall enter an appropriate order dismissing the Rule to Show Cause. Nothing herein shall permit an administratively suspended registered practitioner or person granted limited recognition to seek a stay of the administrative suspension during the pendency of any review of the USPTO Director's final decision.

(4) [Reserved]

(5) An administratively suspended registered practitioner or person granted limited recognition is subject to investigation and discipline for his or her conduct prior to, during, or after the period he or she was administratively suspended.

(6) An administratively suspended registered practitioner or person granted limited recognition is prohibited from practicing before the Office in patent cases while administratively suspended. A registered practitioner or person granted limited recognition who knows he or she has been administratively suspended under this section will be subject to discipline for failing to comply with the provisions of this paragraph (b).

(c) *Administrative inactivation.* (1) Any registered practitioner who shall become employed by the Office shall comply with § 11.116 for withdrawal from the applications, patents, and trademark matters wherein he or she represents an applicant or other person, and notify the OED Director in writing of said employment on the first day of said employment. The name of any registered practitioner employed by the Office shall be endorsed on the roster as administratively inactive. Upon separation from the Office, the administratively inactive practitioner may request reactivation by completing and filing an application, Data Sheet, signing a written undertaking required by § 11.10, and paying the fee set forth in § 1.21(a)(1)(i) of this subchapter. An administratively inactive practitioner remains subject to the provisions of the USPTO Rules of Professional Conduct and to proceedings and sanctions under §§ 11.19 through 11.58 for conduct that violates a provision of the USPTO Rules of Professional Conduct prior to or during employment at the Office. If, within 30 days after separation from the Office, the registered practitioner does not request active status or another status, the registered practitioner will be endorsed on the roster as voluntarily inactive and be subject to the provisions of paragraph (d) of this section.

(2) Any registered practitioner who is a judge of a court of record, full-time court commissioner, U.S. bankruptcy judge, U.S. magistrate judge, or a retired judge who is eligible for temporary judicial assignment and is not engaged in the practice of law may request, in writing, that his or her name be endorsed on the roster as administratively inactive. Upon acceptance of the request, the OED Director shall endorse the name of the practitioner as administratively inactive. Following separation from the bench, the practitioner may request restoration to active status by completing and filing an application, Data Sheet, and signing a written undertaking required by § 11.10.

(d) * * *

(2) [Reserved]

* * * * *

(4) [Reserved]

(5) A registered practitioner in voluntary inactive status is prohibited from practicing before the Office in patent cases while in voluntary inactive status. A registered practitioner in voluntary inactive status will be subject to discipline for failing to comply with the provisions of this paragraph. Upon acceptance of the request for voluntary inactive status, the practitioner must comply with the provisions of § 11.116.

(6) Any registered practitioner whose name has been endorsed as voluntarily inactive pursuant to paragraph (d)(1) of this section and is not under investigation and not subject to a disciplinary proceeding may be restored to active status on the register as may be appropriate provided that the practitioner files a written request for restoration, a completed application for registration on a form supplied by the OED Director furnishing all requested information and material, including information and material pertaining to the practitioner's moral character and reputation under § 11.7(a)(2)(i) during the period of inactivation, a declaration or affidavit attesting to the fact that the practitioner has read the most recent revisions of the patent laws and the rules of practice before the Office, and pays the fees set forth in § 1.21(a)(7)(iii) and (iv) of this subchapter.

(e) *Resignation.* A registered practitioner or a practitioner recognized under § 11.14(c), who is not under investigation under § 11.22 for a possible violation of the USPTO Rules of Professional Conduct, subject to discipline under §§ 11.24 or 11.25, or a practitioner against whom probable cause has been found by a panel of the Committee on Discipline under § 11.23(b), may resign by notifying the

OED Director in writing that he or she desires to resign. Upon acceptance in writing by the OED Director of such notice, that registered practitioner or practitioner under § 11.14 shall no longer be eligible to practice before the Office in patent matters but shall continue to file a change of address for five years thereafter in order that he or she may be located in the event information regarding the practitioner's conduct comes to the attention of the OED Director or any grievance is made about his or her conduct while he or she engaged in practice before the Office. The name of any registered practitioner whose resignation is accepted shall be removed from the register, endorsed as resigned, and notice thereof published in the Official Gazette. Upon acceptance of the resignation by the OED Director, the registered practitioner must comply with the provisions of § 11.116.

(f) *Administrative reinstatement.* (1) Any registered practitioner who has been administratively suspended pursuant to paragraph (b) of this section, or who has resigned pursuant to paragraph (e) of this section, may be reinstated on the register provided the practitioner has applied for reinstatement on an application form supplied by the OED Director, demonstrated compliance with the provisions of § 11.7(a)(2)(i) and (iii), and paid the fees set forth in § 1.21(a)(9)(i) and (a)(9)(ii) of this subchapter. Any person granted limited recognition who has been administratively suspended pursuant to paragraph (b) of this section may have their recognition reactivated provided the practitioner has applied for reinstatement on an application form supplied by the OED Director, demonstrated compliance with the provisions of § 11.7(a)(2)(i) and (iii), and paid the fees set forth in § 1.21(a)(9)(i) and (a)(9)(ii) of this subchapter. A practitioner who has resigned or was administratively suspended for two or more years before the date the Office receives a completed application from the person who resigned or was administratively suspended must also pass the registration examination under § 11.7(b)(1)(ii). Any reinstated practitioner is subject to investigation and discipline for his or her conduct that occurred prior to, during, or after the period of his or her administrative suspension or resignation.

* * * * *

■ 15. Revise § 11.19(a) and (b)(1)(iv) to read as follows:

§ 11.19 Disciplinary jurisdiction; Jurisdiction to transfer to disability inactive status.

(a) All practitioners engaged in practice before the Office; all practitioners administratively suspended; all practitioners registered to practice before the Office in patent cases; all practitioners inactivated; all practitioners authorized under § 11.6(d) to take testimony; and all practitioners transferred to disability inactive status, reprimanded, suspended, or excluded from the practice of law by a duly constituted authority, including by the USPTO Director, are subject to the disciplinary jurisdiction of the Office. Practitioners who have resigned shall also be subject to such jurisdiction with respect to conduct undertaken prior to the resignation and conduct in regard to any practice before the Office following the resignation. A person not registered or recognized to practice before the Office is also subject to the disciplinary authority of the Office if the person provides or offers to provide any legal services before the Office.

(b) * * *

(1) * * *

(iv) Violation of any USPTO Rule of Professional Conduct; or

* * * * *

■ 16. Revise § 11.20(a)(4) and (b) to read as follows:

§ 11.20 Disciplinary sanctions; Transfer to disability inactive status.

(a) * * *

(4) *Probation.* Probation may be imposed *in lieu* of or in addition to any other disciplinary sanction. Any conditions of probation shall be stated in writing in the order imposing probation. The order shall also state whether, and to what extent, the practitioner shall be required to notify clients of the probation. Violation of any condition of probation shall be cause for imposition of the disciplinary sanction. Imposition of the disciplinary sanction predicated upon violation of probation shall occur only after an order to show cause why the disciplinary sanction should not be imposed is resolved adversely to the practitioner.

(b) *Conditions imposed with discipline.* When imposing discipline, the USPTO Director may condition reinstatement upon the practitioner making restitution, successfully completing a professional responsibility course or examination, or any other condition deemed appropriate under the circumstances.

* * * * *

■ 17. Revise § 11.21 to read as follows:

§ 11.21 Warnings.

A warning is neither public nor a disciplinary sanction. The OED Director may conclude an investigation with the issuance of a warning. The warning shall contain a brief statement of facts and USPTO Rules of Professional Conduct relevant to the facts.

■ 18. In § 11.22 revise the section heading, paragraph (f)(2), and the introductory text of paragraph (i) to read as follows:

§ 11.22 Disciplinary investigations.

* * * * *

(f) * * *

(2) The OED Director may request information and evidence regarding possible grounds for discipline of a practitioner from a non-grieving client either after obtaining the consent of the practitioner or upon a finding by a Contact Member of the Committee on Discipline, appointed in accordance with § 11.23(d), that good cause exists to believe that the possible ground for discipline alleged has occurred with respect to non-grieving clients. Neither a request for, nor disclosure of, such information shall constitute a violation of any USPTO Rules of Professional Conduct.

* * * * *

(i) *Closing investigation.* The OED Director shall terminate an investigation and decline to refer a matter to the Committee on Discipline if the OED Director determines that:

* * * * *

■ 19. Revise § 11.24(e) to read as follows:

§ 11.24 Reciprocal discipline.

* * * * * *

(e) *Adjudication in another jurisdiction or Federal agency or program.* In all other respects, a final adjudication in another jurisdiction or Federal agency or program that a practitioner, whether or not admitted in that jurisdiction, has been guilty of misconduct shall establish a prima facie case by clear and convincing evidence that the practitioner has engaged in misconduct under § 11.804.

* * * * *

■ 20. Revise § 11.25(a) to read as follows:

§ 11.25 Interim suspension and discipline based upon conviction of committing a serious crime.

(a) *Notification of OED Director.* Upon being convicted of a crime in a court of the United States, any State, or a foreign country, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing

of the same within thirty days from the date of such conviction. Upon being advised or learning that a practitioner subject to the disciplinary jurisdiction of the Office has been convicted of a crime, the OED Director shall make a preliminary determination whether the crime constitutes a serious crime warranting interim suspension. If the crime is a serious crime, the OED Director shall file with the USPTO Director proof of the conviction and request the USPTO Director to issue a notice and order set forth in paragraph (b)(2) of this section. The OED Director shall in addition, without Committee on Discipline authorization, file with the USPTO Director a complaint against the practitioner complying with § 11.34 predicated upon the conviction of a serious crime. If the crime is not a serious crime, the OED Director shall process the matter in the same manner as any other information or evidence of a possible violation of any USPTO Rule of Professional Conduct coming to the attention of the OED Director.

* * * * *

■ 21. Revise § 11.32 to read as follows:

§ 11.32 Instituting a disciplinary proceeding.

If after conducting an investigation under § 11.22(a), the OED Director is of the opinion that grounds exist for discipline under § 11.19(b), the OED Director, after complying where necessary with the provisions of 5 U.S.C. 558(c), may convene a meeting of a panel of the Committee on Discipline. If convened, the panel of the Committee on Discipline shall then determine as specified in § 11.23(b) whether there is probable cause to bring disciplinary charges. If the panel of the Committee on Discipline determines that probable cause exists to bring charges, the OED Director may institute a disciplinary proceeding by filing a complaint under § 11.34.

■ 22. In § 11.34 revise the introductory text of paragraph (a), and paragraphs (a)(1) and (b) to read as follows:

§ 11.34 Complaint.

(a) A complaint instituting a disciplinary proceeding shall:

(1) Name the person who is the subject of the complaint who may then be referred to as the "respondent";

* * * * *

(b) A complaint will be deemed sufficient if it fairly informs the respondent of any grounds for discipline, and where applicable, the USPTO Rules of Professional Conduct that form the basis for the disciplinary proceeding so that the respondent is able to adequately prepare a defense.

* * * * *

■ 23. Revise § 11.35(a)(2)(ii) and (a)(4)(ii) to read as follows:

§ 11.35 Service of complaint.

(a) * * *

(2) * * *

(ii) A respondent who is not registered at the last address for the respondent known to the OED Director.

* * * * *

(4) * * *

(ii) A respondent who is not registered at the last address for the respondent known to the OED Director.

* * * * *

■ 24. In § 11.54 revise paragraph (a)(2) and the introductory text of paragraph (b) to read as follows:

§ 11.54 Initial decision of hearing officer.

(a) * * *

(2) An order of default judgment, of suspension or exclusion from practice, of reprimand, of probation or an order dismissing the complaint. The order also may impose any conditions deemed appropriate under the circumstances. The hearing officer shall transmit a copy of the decision to the OED Director and to the respondent. After issuing the decision, the hearing officer shall transmit the entire record to the OED Director. In the absence of an appeal to the USPTO Director, the decision of the hearing officer, including a default judgment, will, without further proceedings, become the decision of the USPTO Director thirty days from the date of the decision of the hearing officer.

(b) The initial decision of the hearing officer shall explain the reason for any default judgment, reprimand, suspension, exclusion, or probation, and shall explain any conditions imposed with discipline. In determining any sanction, the following four factors must be considered if they are applicable:

* * * * *

■ 25. In § 11.58 revise the introductory text of paragraph (b)(2) and paragraph (f)(1)(ii) to read as follows:

§ 11.58 Duties of disciplined or resigned practitioner, or practitioner on disability inactive status.

* * * * *

(b) * * *

(2) Within forty-five days after entry of the order of suspension, exclusion, or of acceptance of resignation, the practitioner shall file with the OED Director an affidavit of compliance certifying that the practitioner has fully complied with the provisions of the order, this section, and with § 11.116 for withdrawal from representation. Appended to the affidavit of compliance shall be:

* * * * *

(f) * * *

(1) * * *

(ii) Shows by clear and convincing evidence that the excluded, suspended or resigned practitioner, or practitioner transferred to disability inactive status has complied with the provisions of this section and all USPTO Rules of Professional Conduct; and

* * * * *

§ 11.61 [Removed and reserved]

■ 26. Section 11.61 is removed and reserved.

■ 27. Subpart D is added to Part 11 to read as follows:

Subpart D—USPTO Rules of Professional Conduct

Sec.

11.100 [Reserved]

Client-Practitioner Relationship

11.101 Competence.
11.102 Scope of representation and allocation of authority between client and practitioner.
11.103 Diligence.
11.104 Communication.
11.105 Fees.
11.106 Confidentiality of information.
11.107 Conflict of interest; Current clients.
11.108 Conflict of interest; Current clients; Specific rules.
11.109 Duties to former clients.
11.110 Imputation of conflicts of interest; General rule.
11.111 Former or current Federal Government employees.
11.112 Former judge, arbitrator, mediator or other third-party neutral.
11.113 Organization as client.
11.114 Client with diminished capacity.
11.115 Safekeeping property.
11.116 Declining or terminating representation.
11.117 Sale of law practice.
11.118 Duties to prospective client.
11.119–11.200 [Reserved]

Counselor

11.201 Advisor.
11.202 [Reserved]
11.203 Evaluation for use by third persons.
11.204 Practitioner serving as third-party neutral.
11.205–11.300 [Reserved]

Advocate

11.301 Meritorious claims and contentions.
11.302 Expediting proceedings.
11.303 Candor toward the tribunal.
11.304 Fairness to opposing party and counsel.
11.305 Impartiality and decorum of the tribunal.
11.306 Trial publicity.
11.307 Practitioner as witness.

Subpart D—USPTO Rules of Professional Conduct

§ 11.100 [Reserved]

Client-Practitioner Relationship

§ 11.101 Competence.

A practitioner shall provide competent representation to a client. Competent representation requires the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

§ 11.102 Scope of representation and allocation of authority between client and practitioner.

(a) Subject to paragraphs (c) and (d) of this section, a practitioner shall abide by a client's decisions concerning the objectives of representation and, as required by § 11.104, shall consult with the client as to the means by which they are to be pursued. A practitioner may take such action on behalf of the client as is impliedly authorized to carry out the representation. A practitioner shall abide by a client's decision whether to settle a matter.

(b) [Reserved]

(c) A practitioner may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A practitioner shall not counsel a client to engage, or assist a client, in conduct that the practitioner knows is criminal or fraudulent, but a practitioner may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law.

§ 11.103 Diligence.

A practitioner shall act with reasonable diligence and promptness in representing a client.

§ 11.104 Communication.

(a) A practitioner shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by the USPTO Rules of Professional Conduct;

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) Keep the client reasonably informed about the status of the matter;

(4) Promptly comply with reasonable requests for information from the client; and

(5) Consult with the client about any relevant limitation on the practitioner's conduct when the practitioner knows that the client expects assistance not permitted by the USPTO Rules of Professional Conduct or other law.

(b) A practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

§ 11.105 Fees.

(a) A practitioner shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the practitioner;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the practitioner or practitioners performing the services; and

(8) Whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the practitioner will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the practitioner in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the practitioner shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) [Reserved]

(e) A division of a fee between practitioners who are not in the same firm may be made only if:

(1) The division is in proportion to the services performed by each practitioner or each practitioner assumes joint responsibility for the representation;

(2) The client agrees to the arrangement, including the share each practitioner will receive, and the agreement is confirmed in writing; and

(3) The total fee is reasonable.

§ 11.106 Confidentiality of information.

(a) A practitioner shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, the disclosure is permitted by paragraph (b) of this section, or the disclosure is required by paragraph (c) of this section.

(b) A practitioner may reveal information relating to the representation of a client to the extent the practitioner reasonably believes necessary:

(1) To prevent reasonably certain death or substantial bodily harm;

(2) To prevent the client from engaging in inequitable conduct before the Office or from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the practitioner's services;

(3) To prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime, fraud, or inequitable conduct before the Office in furtherance of which the client has used the practitioner's services;

(4) To secure legal advice about the practitioner's compliance with the USPTO Rules of Professional Conduct;

(5) To establish a claim or defense on behalf of the practitioner in a controversy between the practitioner and the client, to establish a defense to a criminal charge or civil claim against the practitioner based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the practitioner's representation of the client; or

(6) To comply with other law or a court order.

(c) A practitioner shall disclose to the Office information necessary to comply with applicable duty of disclosure provisions.

§ 11.107 Conflict of interest; Current clients.

(a) Except as provided in paragraph (b) of this section, a practitioner shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a) of this section, a practitioner may represent a client if:

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the practitioner in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing.

§ 11.108 Conflict of interest; Current clients; Specific rules.

(a) A practitioner shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) The transaction and terms on which the practitioner acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and

(3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the practitioner's role in the transaction, including whether the practitioner is representing the client in the transaction.

(b) A practitioner shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by the USPTO Rules of Professional Conduct.

(c) A practitioner shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the practitioner or a person related to the practitioner any substantial gift unless the practitioner or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the practitioner or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a practitioner shall not make or negotiate an agreement giving the practitioner literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A practitioner shall not provide financial assistance to a client in connection with pending or contemplated litigation or a proceeding before the Office, except that:

(1) A practitioner may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) A practitioner representing an indigent client may pay court costs and expenses of litigation or a proceeding before the Office on behalf of the client;

(3) A practitioner may advance costs and expenses in connection with a proceeding before the Office provided the client remains ultimately liable for such costs and expenses; and

(4) A practitioner may also advance any fee required to prevent or remedy an abandonment of a client's application by reason of an act or omission attributable to the practitioner and not to the client, whether or not the client is ultimately liable for such fee.

(f) A practitioner shall not accept compensation for representing a client from one other than the client unless:

(1) The client gives informed consent;

(2) There is no interference with the practitioner's independence of professional judgment or with the client-practitioner relationship; and

(3) Information relating to representation of a client is protected as required by § 11.106.

(g) A practitioner who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, unless each client gives informed consent, in a writing signed by the client. The practitioner's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) A practitioner shall not:

(1) Make an agreement prospectively limiting the practitioner's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) Settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the

advice of independent legal counsel in connection therewith.

(i) A practitioner shall not acquire a proprietary interest in the cause of action, subject matter of litigation, or a proceeding before the Office which the practitioner is conducting for a client, except that the practitioner may, subject to the other provisions in this section:

(1) Acquire a lien authorized by law to secure the practitioner's fee or expenses;

(2) Contract with a client for a reasonable contingent fee in a civil case; and

(3) In a patent case or a proceeding before the Office, take an interest in the patent or patent application as part or all of his or her fee.

(j) [Reserved]

(k) While practitioners are associated in a firm, a prohibition in paragraphs (a) through (i) of this section that applies to any one of them shall apply to all of them.

§ 11.109 Duties to former clients.

(a) A practitioner who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A practitioner shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the practitioner formerly was associated had previously represented a client:

(1) Whose interests are materially adverse to that person; and

(2) About whom the practitioner had acquired information protected by §§ 11.106 and 11.109(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A practitioner who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) Use information relating to the representation to the disadvantage of the former client except as the USPTO Rules of Professional Conduct would permit or require with respect to a client, or when the information has become generally known; or

(2) Reveal information relating to the representation except as the USPTO Rules of Professional Conduct would permit or require with respect to a client.

§ 11.110 Imputation of conflicts of interest; General rule.

(a) While practitioners are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by §§ 11.107 or 11.109, unless:

(1) The prohibition is based on a personal interest of the disqualified practitioner and does not present a significant risk of materially limiting the representation of the client by the remaining practitioners in the firm; or

(2) The prohibition is based upon § 11.109(a) or (b), and arises out of the disqualified practitioner's association with a prior firm, and

(i) The disqualified practitioner is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) Written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this section, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened practitioner's compliance with the USPTO Rules of Professional Conduct; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures.

(b) When a practitioner has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated practitioner and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated practitioner represented the client; and

(2) Any practitioner remaining in the firm has information protected by §§ 11.106 and 11.109(c) that is material to the matter.

(c) A disqualification prescribed by this section may be waived by the affected client under the conditions stated in § 11.107.

(d) The disqualification of practitioners associated in a firm with former or current Federal Government lawyers is governed by § 11.111.

§ 11.111 Former or current Federal Government employees.

A practitioner who is a former or current Federal Government employee shall not engage in any conduct which is contrary to applicable Federal ethics law, including conflict of interest statutes and regulations of the department, agency or commission formerly or currently employing said practitioner.

§ 11.112 Former judge, arbitrator, mediator or other third-party neutral.

(a) Except as stated in paragraph (d) of this section, a practitioner shall not represent anyone in connection with a matter in which the practitioner participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A practitioner shall not negotiate for employment with any person who is involved as a party or as practitioner for a party in a matter in which the practitioner is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A practitioner serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or practitioner involved in a matter in which the clerk is participating personally and substantially, but only after the practitioner has notified the judge, or other adjudicative officer.

(c) If a practitioner is disqualified by paragraph (a) of this section, no practitioner in a firm with which that practitioner is associated may knowingly undertake or continue representation in the matter unless:

(1) The disqualified practitioner is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this section.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

§ 11.113 Organization as client.

(a) A practitioner employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a practitioner for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the practitioner

shall proceed as is reasonably necessary in the best interest of the organization. Unless the practitioner reasonably believes that it is not necessary in the best interest of the organization to do so, the practitioner shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d) of this section, if

(1) Despite the practitioner's efforts in accordance with paragraph (b) of this section the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) The practitioner reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the practitioner may reveal information relating to the representation whether or not § 11.106 permits such disclosure, but only if and to the extent the practitioner reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) of this section shall not apply with respect to information relating to a practitioner's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A practitioner who reasonably believes that he or she has been discharged because of the practitioner's actions taken pursuant to paragraphs (b) or (c) of this section, or who withdraws under circumstances that require or permit the practitioner to take action under either of those paragraphs, shall proceed as the practitioner reasonably believes necessary to assure that the organization's highest authority is informed of the practitioner's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a practitioner shall explain the identity of the client when the practitioner knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the practitioner is dealing.

(g) A practitioner representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of § 11.107. If the organization's consent to the dual representation is required by § 11.107, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

§ 11.114 Client with diminished capacity.

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the practitioner shall, as far as reasonably possible, maintain a normal client-practitioner relationship with the client.

(b) When the practitioner reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the practitioner may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected under § 11.106. When taking protective action pursuant to paragraph (b) of this section, the practitioner is impliedly authorized under § 11.106(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

§ 11.115 Safekeeping property.

(a) A practitioner shall hold property of clients or third persons that is in a practitioner's possession in connection with a representation separate from the practitioner's own property. Funds shall be kept in a separate account maintained in the state where the practitioner's office is situated, or elsewhere with the consent of the client or third person. Where the practitioner's office is situated in a foreign country, funds shall be kept in a separate account maintained in that foreign country or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the practitioner and shall be preserved for a period of five years after termination of the representation.

(b) A practitioner may deposit the practitioner's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A practitioner shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the practitioner only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a practitioner shall promptly notify the client or third person. Except as stated in this section or otherwise permitted by law or by agreement with the client, a practitioner shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a practitioner is in possession of property in which two or more persons (one of whom may be the practitioner) claim interests, the property shall be kept separate by the practitioner until the dispute is resolved. The practitioner shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) All separate accounts for clients or third persons kept by a practitioner must also comply with the following provisions:

(1) *Required records.* The records to be kept include:

(i) Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(ii) Ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(iii) Copies of retainer and compensation agreements with clients;

(iv) Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(v) Copies of bills for legal fees and expenses rendered to clients;

(vi) Copies of records showing disbursements on behalf of clients;

(vii) The physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and

substitute checks provided by a financial institution;

(viii) Records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(ix) Copies of monthly trial balances and quarterly reconciliations of the client trust accounts maintained by the practitioner; and

(x) Copies of those portions of client files that are reasonably related to client trust account transactions.

(2) *Client trust account safeguards.* With respect to client trust accounts required by paragraphs (a) through (e) of this section:

(i) Only a practitioner or a person under the direct supervision of the practitioner shall be an authorized signatory or authorize transfers from a client trust account;

(ii) Receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(iii) Withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized electronic transfer.

(3) *Availability of records.* Records required by paragraph (f)(1) of this section may be maintained by electronic, photographic, or other media provided that they otherwise comply with paragraphs (f)(1) and (f)(2) of this section and that printed copies can be produced. These records shall be readily accessible to the practitioner.

(4) *Lawyers.* The records kept by a lawyer are deemed to be in compliance with this section if the types of records that are maintained meet the recordkeeping requirements of a state in which the lawyer is licensed and in good standing, the recordkeeping requirements of the state where the lawyer's principal place of business is located, or the recordkeeping requirements of this section.

(5) *Patent agents and persons granted limited recognition who are employed in the United States by a law firm.* The records kept by a law firm employing one or more registered patent agents or persons granted limited recognition under § 11.9 are deemed to be in compliance with this section if the types of records that are maintained meet the recordkeeping requirements of the state where at least one practitioner of the law firm is licensed and in good standing, the recordkeeping requirements of the state where the law firm's principal place of business is located, or the recordkeeping requirements of this section.

§ 11.116 Declining or terminating representation.

(a) Except as stated in paragraph (c) of this section, a practitioner shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if:

(1) The representation will result in violation of the USPTO Rules of Professional Conduct or other law;

(2) The practitioner's physical or mental condition materially impairs the practitioner's ability to represent the client; or

(3) The practitioner is discharged.

(b) Except as stated in paragraph (c) of this section, a practitioner may withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) The client persists in a course of action involving the practitioner's services that the practitioner reasonably believes is criminal or fraudulent;

(3) The client has used the practitioner's services to perpetrate a crime or fraud;

(4) A client insists upon taking action that the practitioner considers repugnant or with which the practitioner has a fundamental disagreement;

(5) The client fails substantially to fulfill an obligation to the practitioner regarding the practitioner's services and has been given reasonable warning that the practitioner will withdraw unless the obligation is fulfilled;

(6) The representation will result in an unreasonable financial burden on the practitioner or has been rendered unreasonably difficult by the client; or

(7) Other good cause for withdrawal exists.

(c) A practitioner must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a practitioner shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a practitioner shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The practitioner may retain papers relating to the client to the extent permitted by other law.

§ 11.117 Sale of law practice.

A practitioner or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in a geographic area in which the practice has been conducted;

(b)(1) Except as provided in paragraph (b)(2) of this section, the entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(2) To the extent the practice or the area of practice involves patent proceedings before the Office, that practice or area of practice may be sold only to one or more registered practitioners or law firms that include at least one registered practitioner;

(c)(1) The seller gives written notice to each of the seller's clients regarding:

(i) The proposed sale;

(ii) The client's right to retain other counsel or to take possession of the file; and

(iii) The fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days after receipt of the notice.

(2) If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file; and

(d) The fees charged clients shall not be increased by reason of the sale.

§ 11.118 Duties to prospective client.

(a) A person who discusses with a practitioner the possibility of forming a client-practitioner relationship with respect to a matter is a prospective client.

(b) Even when no client-practitioner relationship ensues, a practitioner who has had discussions with the prospective client shall not use or reveal information learned in the consultation, except as § 11.109 would permit with respect to information of a former client.

(c) A practitioner subject to paragraph (b) of this section shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the practitioner received information

from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d) of this section. If a practitioner is disqualified from representation under this paragraph, no practitioner in a firm with which that practitioner is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d) of this section.

(d) When the practitioner has received disqualifying information as defined in paragraph (c) of this section, representation is permissible if:

(1) Both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) The practitioner who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) The disqualified practitioner is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) Written notice is promptly given to the prospective client.

§§ 11.119–11.200 [Reserved]

Counselor

§ 11.201 Advisor.

In representing a client, a practitioner shall exercise independent professional judgment and render candid advice. In rendering advice, a practitioner may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.

§ 11.202 [Reserved]

§ 11.203 Evaluation for use by third persons.

(a) A practitioner may provide an evaluation of a matter affecting a client for the use of someone other than the client if the practitioner reasonably believes that making the evaluation is compatible with other aspects of the practitioner's relationship with the client.

(b) When the practitioner knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the practitioner shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by § 11.106.

§ 11.204 Practitioner serving as third-party neutral.

(a) A practitioner serves as a third-party neutral when the practitioner assists two or more persons who are not clients of the practitioner to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the practitioner to assist the parties to resolve the matter.

(b) A practitioner serving as a third-party neutral shall inform unrepresented parties that the practitioner is not representing them. When the practitioner knows or reasonably should know that a party does not understand the practitioner's role in the matter, the practitioner shall explain the difference between the practitioner's role as a third-party neutral and a practitioner's role as one who represents a client.

§§ 11.205–11.300 [Reserved]

Advocate

§ 11.301 Meritorious claims and contentions.

A practitioner shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law.

§ 11.302 Expediting proceedings.

A practitioner shall make reasonable efforts to expedite proceedings before a tribunal consistent with the interests of the client.

§ 11.303 Candor toward the tribunal.

(a) A practitioner shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the practitioner;

(2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel in an *inter partes* proceeding, or fail to disclose such authority in an *ex parte* proceeding before the Office if such authority is not otherwise disclosed; or

(3) Offer evidence that the practitioner knows to be false. If a practitioner, the practitioner's client, or a witness called by the practitioner, has offered material evidence and the practitioner comes to know of its falsity, the practitioner shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A practitioner may refuse to offer evidence that the practitioner reasonably believes is false.

(b) A practitioner who represents a client in a proceeding before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) of this section continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by § 11.106.

(d) In an *ex parte* proceeding, a practitioner shall inform the tribunal of all material facts known to the practitioner that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) In a proceeding before the Office, a practitioner shall disclose to the Office information necessary to comply with applicable duty of disclosure provisions.

§ 11.304 Fairness to opposing party and counsel.

A practitioner shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A practitioner shall not counsel or assist another person to do any such act;

(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) Make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) In a proceeding before a tribunal, allude to any matter that the practitioner does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) The person is a relative or an employee or other agent of a client; and

(2) The practitioner reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

§ 11.305 Impartiality and decorum of the tribunal.

A practitioner shall not:

(a) Seek to influence a judge, hearing officer, administrative law judge, administrative patent judge, administrative trademark judge, juror, prospective juror, employee or officer of the Office, or other official by means prohibited by law;

(b) Communicate *ex parte* with such a person during the proceeding unless authorized to do so by law, rule or court order; or

(c) [Reserved]

(d) Engage in conduct intended to disrupt any proceeding before a tribunal.

§ 11.306 Trial publicity.

(a) A practitioner who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the practitioner knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a) of this section, a practitioner may state:

(1) The claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) Information contained in a public record;

(3) That an investigation of a matter is in progress;

(4) The scheduling or result of any step in litigation;

(5) A request for assistance in obtaining evidence and information necessary thereto; and

(6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest.

(c) Notwithstanding paragraph (a) of this section, a practitioner may make a statement that a reasonable practitioner would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the practitioner or the practitioner's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No practitioner associated in a firm or government agency with a practitioner subject to paragraph (a) of this section shall make a statement prohibited by paragraph (a).

§ 11.307 Practitioner as witness.

(a) A practitioner shall not act as advocate at a proceeding before a tribunal in which the practitioner is likely to be a necessary witness unless:

(1) The testimony relates to an uncontested issue;

(2) The testimony relates to the nature and value of legal services rendered in the case; or

(3) Disqualification of the practitioner would work substantial hardship on the client.

(b) A practitioner may act as advocate in a proceeding before a tribunal in which another practitioner in the practitioner's firm is likely to be called as a witness unless precluded from doing so by §§ 11.107 or 11.109.

§ 11.308 [Reserved]

§ 11.309 Advocate in nonadjudicative proceedings.

A practitioner representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of §§ 11.303(a) through (c), 11.304(a) through (c), and 11.305.

§§ 11.310—11.400 [Reserved]

Transactions With Persons Other Than Clients

§ 11.401 Truthfulness in statements to others.

In the course of representing a client, a practitioner shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by § 11.106.

§ 11.402 Communication with person represented by a practitioner.

(a) In representing a client, a practitioner shall not communicate about the subject of the representation with a person the practitioner knows to be represented by another practitioner in the matter, unless the practitioner has the consent of the other practitioner or is authorized to do so by law, rule, or a court order.

(b) This section does not prohibit communication by a practitioner with government officials who are otherwise represented by counsel and who have the authority to redress the grievances of the practitioner's client, provided that, if the communication relates to a matter for which the government official is represented, then prior to the communication the practitioner must disclose to such government official both the practitioner's identity and the fact that the practitioner represents a party with a claim against the government.

§ 11.403 Dealing with unrepresented person.

In dealing on behalf of a client with a person who is not represented by a practitioner, a practitioner shall not state or imply that the practitioner is disinterested. When the practitioner knows or reasonably should know that the unrepresented person misunderstands the practitioner's role in the matter, the practitioner shall make reasonable efforts to correct the misunderstanding. The practitioner shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the practitioner knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

§ 11.404 Respect for rights of third persons.

(a) In representing a client, a practitioner shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A practitioner who receives a document or electronically stored information relating to the representation of the practitioner's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

§§ 11.405—11.500 [Reserved]

Law Firms and Associations

§ 11.501 Responsibilities of partners, managers, and supervisory practitioners.

(a) A practitioner who is a partner in a law firm, and a practitioner who individually or together with other practitioners possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all practitioners in the firm conform to the USPTO Rules of Professional Conduct.

(b) A practitioner having direct supervisory authority over another

practitioner shall make reasonable efforts to ensure that the other practitioner conforms to the USPTO Rules of Professional Conduct.

(c) A practitioner shall be responsible for another practitioner's violation of the USPTO Rules of Professional Conduct if:

(1) The practitioner orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The practitioner is a partner or has comparable managerial authority in the law firm in which the other practitioner practices, or has direct supervisory authority over the other practitioner, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

§ 11.502 Responsibilities of a subordinate practitioner.

(a) A practitioner is bound by the USPTO Rules of Professional Conduct notwithstanding that the practitioner acted at the direction of another person.

(b) A subordinate practitioner does not violate the USPTO Rules of Professional Conduct if that practitioner acts in accordance with a supervisory practitioner's reasonable resolution of an arguable question of professional duty.

§ 11.503 Responsibilities regarding non-practitioner assistance.

With respect to a non-practitioner assistant employed or retained by or associated with a practitioner:

(a) A practitioner who is a partner, and a practitioner who individually or together with other practitioners possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the practitioner;

(b) A practitioner having direct supervisory authority over the non-practitioner assistant shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the practitioner; and

(c) A practitioner shall be responsible for conduct of such a person that would be a violation of the USPTO Rules of Professional Conduct if engaged in by a practitioner if:

(1) The practitioner orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The practitioner is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

§ 11.504 Professional independence of a practitioner.

(a) A practitioner or law firm shall not share legal fees with a non-practitioner, except that:

(1) An agreement by a practitioner with the practitioner's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the practitioner's death, to the practitioner's estate or to one or more specified persons;

(2) A practitioner who purchases the practice of a deceased, disabled, or disappeared practitioner may, pursuant to the provisions of § 11.117, pay to the estate or other representative of that practitioner the agreed-upon purchase price;

(3) A practitioner or law firm may include non-practitioner employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) A practitioner may share legal fees, whether awarded by a tribunal or received in settlement of a matter, with a nonprofit organization that employed, retained or recommended employment of the practitioner in the matter and that qualifies under Section 501(c)(3) of the Internal Revenue Code.

(b) A practitioner shall not form a partnership with a non-practitioner if any of the activities of the partnership consist of the practice of law.

(c) A practitioner shall not permit a person who recommends, employs, or pays the practitioner to render legal services for another to direct or regulate the practitioner's professional judgment in rendering such legal services.

(d) A practitioner shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A non-practitioner owns any interest therein, except that a fiduciary representative of the estate of a practitioner may hold the stock or interest of the practitioner for a reasonable time during administration;

(2) A non-practitioner is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) A non-practitioner has the right to direct or control the professional judgment of a practitioner.

§ 11.505 Unauthorized practice of law.

A practitioner shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

§ 11.506 Restrictions on right to practice.

A practitioner shall not participate in offering or making:

(a) A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a practitioner to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) An agreement in which a restriction on the practitioner's right to practice is part of the settlement of a client controversy.

§ 11.507 Responsibilities regarding law-related services.

A practitioner shall be subject to the USPTO Rules of Professional Conduct with respect to the provision of law-related services if the law-related services are provided:

(a) By the practitioner in circumstances that are not distinct from the practitioner's provision of legal services to clients; or

(b) In other circumstances by an entity controlled by the practitioner individually or with others if the practitioner fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-practitioner relationship do not exist.

§§ 11.508—11.700 [Reserved]

Information About Legal Services

§ 11.701 Communications concerning a practitioner's services.

A practitioner shall not make a false or misleading communication about the practitioner or the practitioner's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

§ 11.702 Advertising.

(a) Subject to the requirements of §§ 11.701 and 11.703, a practitioner may advertise services through written, recorded or electronic communication, including public media.

(b) A practitioner shall not give anything of value to a person for recommending the practitioner's services except that a practitioner may:

(1) Pay the reasonable costs of advertisements or communications permitted by this section;

(2) [Reserved]

(3) Pay for a law practice in accordance with § 11.117; and

(4) Refer clients to another practitioner or a non-practitioner professional pursuant to an agreement not otherwise prohibited under the USPTO Rules of Professional Conduct that provides for the other person to refer clients or customers to the practitioner, if:

(i) The reciprocal referral agreement is not exclusive, and

(ii) The client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this section shall include the name and office address of at least one practitioner or law firm responsible for its content.

§ 11.703 Direct contact with prospective clients.

(a) A practitioner shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain, unless the person contacted:

(1) Is a practitioner; or

(2) Has a family, close personal, or prior professional relationship with the practitioner.

(b) A practitioner shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a) of this section, if:

(1) The prospective client has made known to the practitioner a desire not to be solicited by the practitioner; or

(2) The solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a practitioner soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2) of this section.

(d) Notwithstanding the prohibitions in paragraph (a) of this section, a practitioner may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the practitioner that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

§ 11.704 Communication of fields of practice and specialization.

(a) A practitioner may communicate the fact that the practitioner does or does not practice in particular fields of law.

(b) A registered practitioner who is an attorney may use the designation "Patents," "Patent Attorney," "Patent Lawyer," "Registered Patent Attorney," or a substantially similar designation. A registered practitioner who is not an attorney may use the designation "Patents," "Patent Agent," "Registered Patent Agent," or a substantially similar designation. Unless authorized by § 11.14(b), a registered patent agent shall not hold himself or herself out as being qualified or authorized to practice before the Office in trademark matters or before a court.

(c) [Reserved]

(d) A practitioner shall not state or imply that a practitioner is certified as a specialist in a particular field of law, unless:

(1) The practitioner has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) The name of the certifying organization is clearly identified in the communication.

(e) An individual granted limited recognition under § 11.9 may use the designation "Limited Recognition."

§ 11.705 Firm names and letterheads.

(a) A practitioner shall not use a firm name, letterhead or other professional designation that violates § 11.701. A trade name may be used by a practitioner in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of § 11.701.

(b) [Reserved]

(c) The name of a practitioner holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the practitioner is not actively and regularly practicing with the firm.

§§ 11.706–11.800 [Reserved]

Maintaining the Integrity of the Profession

§ 11.801 Registration, recognition and disciplinary matters.

An applicant for registration or recognition to practice before the Office, or a practitioner in connection with an application for registration or recognition, or a practitioner in connection with a disciplinary or reinstatement matter, shall not:

(a) Knowingly make a false statement of material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, fail to cooperate with the Office of Enrollment and Discipline in an investigation of any matter before it, or knowingly fail to respond to a lawful demand or request for information from an admissions or disciplinary authority, except that the provisions of this section do not require disclosure of information otherwise protected by § 11.106.

§ 11.802 Judicial and legal officials.

(a) A practitioner shall not make a statement that the practitioner knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A practitioner who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

§ 11.803 Reporting professional misconduct.

(a) A practitioner who knows that another practitioner has committed a violation of the USPTO Rules of Professional Conduct that raises a substantial question as to that practitioner's honesty, trustworthiness or fitness as a practitioner in other respects, shall inform the OED Director and any other appropriate professional authority.

(b) A practitioner who knows that a judge, hearing officer, administrative law judge, administrative patent judge, or administrative trademark judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the individual's fitness for office shall inform the appropriate authority.

(c) The provisions of this section do not require disclosure of information otherwise protected by § 11.106 or information gained while participating in an approved lawyers assistance program.

§ 11.804 Misconduct.

It is professional misconduct for a practitioner to:

(a) Violate or attempt to violate the USPTO Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the practitioner's honesty, trustworthiness or fitness as a practitioner in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the USPTO Rules of Professional Conduct or other law;

(f) Knowingly assist a judge, hearing officer, administrative law judge, administrative patent judge, administrative trademark judge, or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) Knowingly assist an officer or employee of the Office in conduct that is a violation of applicable rules of conduct or other law;

(h) Be publicly disciplined on ethical or professional misconduct grounds by any duly constituted authority of:

(1) A State,

(2) The United States, or

(3) The country in which the practitioner resides; or

(i) Engage in other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

§§ 11.805–11.900 [Reserved]

§ 11.901 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify disciplinary sanctions under the provisions of this part.

(b) No practitioner shall be subject to a disciplinary proceeding under this part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 28. The authority citation for 37 CFR part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134 and 135.

■ 29. Revise § 41.5(c) to read as follows:

§ 41.5 Counsel.

* * * * *

(c) *Withdrawal.* Counsel may not withdraw from a proceeding before the Board unless the Board authorizes such withdrawal. *See* § 11.116 of this subchapter regarding conditions for withdrawal.

* * * * *

Dated: March 25, 2013.

Teresa Stanek Rea,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 2013–07382 Filed 4–2–13; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, APRIL

19393–19584..... 1
19585–19978..... 2
19979–20212..... 3

CFR PARTS AFFECTED DURING APRIL

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3 CFR

Executive Orders:
13639.....19979

7 CFR

3201.....19393

8 CFR

1292.....19400

10 CFR

Proposed Rules:
429.....19606
430.....19606

12 CFR

272.....19981

14 CFR

25.....19981
33.....19982
39.....19983
71.....19985

Proposed Rules:
39.....19628
121.....19630

18 CFR

154.....19409

20 CFR

Proposed Rules:
638.....19632
670.....19632

21 CFR

73.....19413
510.....19986
522.....19986
558.....19986
600.....19585

23 CFR

Proposed Rules:
771.....20074

26 CFR

Proposed Rules:
1.....19950

29 CFR

Proposed Rules:
15.....19632
4000.....20039
4001.....20039
4043.....20039
4204.....20039
4206.....20039
4231.....20039

33 CFR

117.....19415, 19585
165.....19988

Proposed Rules:
100.....19632, 20066
165.....19431

34 CFR

Proposed Rules:
Ch. III.....20069

37 CFR

1.....19416, 20180
2.....20180
7.....20180
10.....20180
11.....20180
41.....20180

38 CFR

17.....19586

40 CFR

52.....19421, 19596, 19599, 19602, 19990, 19991, 19994, 19998, 20001
70.....19602
81.....20001
82.....20004
98.....19605
180.....20029, 20032
239.....20035
258.....20035

Proposed Rules:
52.....19434, 19636
70.....19636
98.....19802
239.....20073
258.....20073
450.....19434

42 CFR

433.....19918

47 CFR

1.....19424
22.....19424
24.....19424
27.....19424
90.....19424

Proposed Rules:
20.....19442

49 CFR

Proposed Rules:
622.....20074

50 CFR

648.....20037
679.....20037

Proposed Rules:
17.....20074

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H.R. 933/P.L. 113–6
Consolidated and Further Continuing Appropriations Act, 2013 (Mar. 26, 2013; 127 Stat. 198)
Last List March 15, 2013

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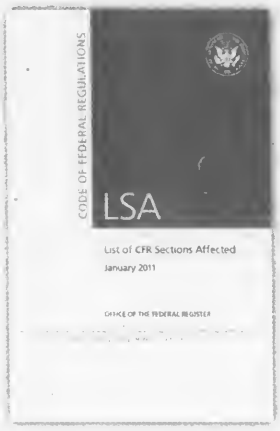

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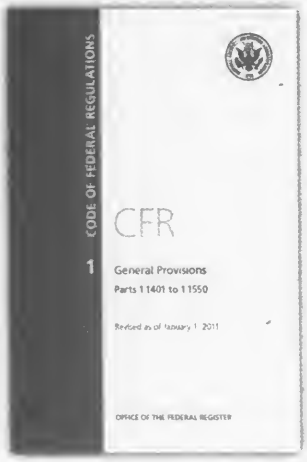

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