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

Rules and Regulations

Federal Register
Vol. 76, No. 182
Tuesday, September 20, 2011

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AH41

Guaranteed Loan Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: The Farm Service Agency (FSA) is amending the regulations for guaranteed loans to change the amount charged and collected in order for FSA to provide a guarantee. Except in certain limited cases, FSA currently charges a fee of 1 percent (1%) of the guaranteed amount on all guaranteed loans. The rule change is necessary for FSA to be able to offset the cost of the guaranteed loan program to maintain program funding to farmers and ranchers. Specifically, FSA is changing the current guaranteed loan fee from 1 percent to 1.5 percent.

DATES: *Effective Date:* October 1, 2011.

Comment Date: We will consider comments that we receive by November 21, 2011.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the volume, regulation identifier (RIN) date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Director, Loan Making Division, Farm Loan Programs, FSA, USDA, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522.
- *Hand Delivery or Courier: Deliver comments to:* USDA FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW., Washington, DC 20250.

Comments will be available for inspection online at *http://www.regulations.gov* and in the Office of the Director, Loan Making Division, FSA, at 1400 Independence Avenue, SW., Washington, DC, Monday through Friday between 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Tracy L. Jones, telephone: (202) 720–3889. Persons with disabilities or who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

FSA published a proposed rule on May 15, 2006, (71 FR 27978–27980) proposing to amend regulations governing fees on loans made in the Guaranteed Loan Program.

As specified in 7 CFR part 762, FSA provides guaranteed loans to eligible lenders (for example banks, Farm Credit System institutions, credit unions) with a guarantee of up to 95 percent of the loss of principal and interest on a loan in certain cases. Farmers and ranchers apply to an agricultural lender, who then applies for the guarantee. The FSA guarantee permits lenders to make agricultural credit available to farmers who do not meet the lender's normal underwriting standards.

FSA guaranteed loans may be made for farm ownership, conservation, and operating purposes. Guaranteed farm ownership loans (FO) generally may be made to purchase farmland, construct or repair buildings and other fixtures, develop farmland to promote soil and water conservation, or refinance debt. Guaranteed operating loans (OL) generally may be used to purchase livestock, farm equipment, pay for minor improvements to buildings, costs associated with land and water development, annual operating expenses, family living expenses, and to refinance debts under certain conditions. Guaranteed conservation loans (CL) may be made to implement conservation projects deemed necessary by a farmer's Natural Resources Conservation Service conservation plan. On May 13, 2011, a **Federal Register** notice (76 FR 27986) announced that FSA is no longer accepting direct or guaranteed loan applications for CL Program due to a lack of funding. A notice will be published in the **Federal Register** announcing the date FSA will resume accepting direct and guaranteed loan applications for the CL Program if funding becomes available.

The authority for FSA to set the amount of the fee is through several laws. The Consolidated Farm and Rural Development Act (CONTACT) section 307(b) (7 U.S.C. 1927) authorizes fees on farm ownership loans. As specified in the CONACT, the fees are to be set at an amount as ''the Secretary may require.'' For the OL and CL Program, Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701) authorizes fees be prescribed for services or things of value to individuals or businesses provided by the Government.

FSA currently charges a one-time guarantee fee of 1 percent (1.0%) on guaranteed loans at the time of loan origination as specified in 7 CFR 762.130. FSA does not charge continuation fees for annual renewal of lines of credit (LOC) type OLs, loan servicing, or restructuring actions.

In the proposed rule, FSA proposed increasing the existing one-time guarantee fee from 1 percent to 1.5 percent and adding a new annual continuation fee of 0.75 percent for advances on LOCs. This rule will change the regulation for the one-time guarantee fee from a fixed rate of 1 percent to a calculated rate that will initially be set at 1.5 percent on October 1, 2011. The fee schedule with this new rate will be available at *http://www.fsa.usda.gov/Internet/FSA_File/loanschartoct11.pdf* and at any FSA office and is subject to future necessary revisions.

The increase to 1.5 percent is required now because as proposed in the 2012 budget FSA will have less authority to fund guaranteed loans. Based on the proposed 2012 budget, the fee will need to be increased to 1.5 percent for FO, OL, and CL guarantees. FSA expects future budgets will result in occasional small increases in the future, but does not expect that routine annual increases would be required.

The assumptions used in the President's Fiscal Year (FY) 2012 Budget proposal included ''Upfront fees'' of 1.5 percent in calculating the subsidy costs for FO, OL, and CL guarantees. In addition, the 2012 budget

proposes a substantially lower budget authority for the Guaranteed Loan Program. Without the increase in the guarantee fee, there will be no budget authority to make any guaranteed FOs and very little budget authority to make guaranteed OLs.

The budget process for FSA loans is governed by the Federal Credit Reform Act (Credit Reform) of 1990. Credit Reform changed the way the costs of direct loans and loan guarantees are accounted for in the Federal Budget, placing the costs of credit programs on a budgetary basis equivalent to other Federal spending. These costs, referred to as subsidy costs, are developed based on criteria published in the Office of Management and Budget (OMB) Circular No. A–11, ''Preparation, Submission, and Execution of the Budget.'' Annual appropriations for the FSA Guaranteed Loan Program are based on these subsidy costs, not the actual principal of the loans guaranteed, and are recorded as budget authority.

In summary, the subsidy cost represents the cost to the Government for each dollar guaranteed and this is the amount of ''budget authority'' appropriated to the agency. For example, if the subsidy cost is $0.03 for each dollar guaranteed, the subsidy rate is 3 percent. The total principal amount that can be guaranteed by FSA in a fiscal year, referred to as ''program authority,'' is determined by dividing the budget authority by the subsidy rate (program authority = budget authority ÷ subsidy rate). FSA program authority is reduced if there is a decrease in budget authority, without a corresponding decrease in subsidy rate, or an increase in subsidy rate, without a corresponding increase in budget authority. Expenses such as employee salaries, office leases and supplies, and software development are excluded from the program's budget authority.

As discussed below in the discussion of comments, FSA reconsidered the proposed annual continuation fee of 0.75 percent for a LOC included in the proposed rule and is not implementing that proposed new continuation fee.

Discussion of Comments

FSA received 619 comments on the proposed rule from individuals, employees, and the District of Columbia.

The following provides a summary of the issues raised in the comments to the proposed rule and our responses, including changes we are making to the regulations in response to the comments.

An overwhelming majority of the comments received opposed the rule change. Although most comments were specific about either the proposed fee increase or the new annual fee, other comments responded to the proposed rule in general.

The majority of the comments opposed adding an annual 0.75 percent fee to LOCs as an excessive and cumbersome fee to collect on an annual basis. FSA has taken into consideration the requirements of the budget and the burden this administrative fee will have on LOCs, and is not adding the proposed 0.75 percent annual continuation fee. For guaranteed LOCs the guarantee fee would still be due in the first year, but farmers would have access to funding in future years without any additional fee cost. Because FSA will not change the regulation regarding the LOC annual fee, the detailed discussion of comments and responses below focuses on the comments that include the proposed increase in the existing guarantee fee.

Several commenters supported the rule change suggesting that a guarantee fee of 1.5 percent would be manageable for FO, OL, and LOC. Several commenters supported the change noting that the costs of the guaranteed program have increased since the inception of the current pricing schedule in the early 1980s, and did not dispute increasing the fee to 1.5 percent on both term loans and lines of credit. The supporters believe the fee increase will not materially affect the borrower's cashflow because the 0.5 percent increase will be amortized over the term of the operating and farm ownership loans. Supporters indicated it would be better to charge a one-time fee rather than the annual continuation fee, even if the one-time fee was higher than the 1.5 percent.

Below are summarized issues raised in the comments FSA received regarding the guarantee fees:

Comment: Fees associated with the guarantee program may add from $1 to $7,000 to the cost of originating a loan, and in many cases may be the difference between a positive and negative cashflow. Increasing existing fees for operating and ownership loans up to the proposed 1.5 percent level would hurt a large number of producers.

Response: The 0.5 percent increase will have a greater impact on borrowers of LOCs and term OLs. For LOCs, the fee change has the greatest effect because the entire fee is paid by the farmer during the initial year of the loan; however, no additional fees will be charged in subsequent years when loan funds are readvanced. For term OLs, the fee increase has a lesser effect than with LOCs on the repayment requirements because the maximum term for these loans is 7 years, which limits the period over which the fee can be amortized. The impact on farmers receiving FO loans should be less significant. These are long term loans and amortization of the fee should have a minimal effect on cashflow. Based on a maximum loan of $1,119,000, the increase in the fee would be an additional $5,036 ($1,119,000 × 90 percent typical guarantee × 0.5 percent increase in fee) that could be amortized over the life of the loan. In FY 2010 the average fee was $2,544. If the fee on those loans were 1.5 percent, the average fee would have been $3,816. If the difference between the two fees is amortized over 7 years, at an interest rate of 5 percent, it would be an additional $220 annually. However, beginning farmers and socially disadvantaged (those who have been historically underserved) farmers who participate in the Downpayment Loan Program, along with borrowers who participate in the FSA Interest Assistance Program or a State Beginning Farmer Program and those direct FSA borrowers who are refinancing their direct loans will continue to have the one-time guarantee fee waived as provided in 7 CFR 762.130(d)(4)(iii)(C). In FY 2010, 13 percent of all guaranteed loans approved were not charged a fee under this regulation.

Comment: The proposed changes are burdensome on rural America. It is doubtful that FSA would cashflow with an additional 0.5 percent increase in guarantee fees. Therefore, the fee should stay as it is. While it is understood that the cost of doing business is increasing for everyone (including the Federal Government), proposing to increase costs targeting this segment of our population is unwise and ill-advised.

Response: The increase in the guarantee fee is not tied to expenses such as employees' salaries, office leases and supplies, and software development. The increase in the fee is necessary to insure that the guaranteed program has the funding necessary to implement the program and provide guarantee services to approved farm lenders. It is not to mitigate the above mentioned administrative expenses. Over the years, the cost of implementing the Guaranteed Loan Program has stayed relatively constant, which is attributed to the successful performance of the guaranteed lenders.

Comment: Instead of the proposed fee changes, change the guarantee fee to a 2 percent to 2.5 percent fee upfront.

Response: Based on the anticipated FY 2012 budget, the fee increase of 0.5 percent is the most appropriate increase at this time. This allows for a balance

between increased cost to the borrower and funds available. As noted above, the fee schedule is available at *http://www.fsa.usda.gov/Internet/FSA_File/loanschartoct11.pdf* and at any FSA office and may change in the future as needed.

Comment: Apply the proposed change only to new guarantees, not existing ones.

Response: There will be no changes to the existing loan guarantees. The guarantee fee change will take effect on October 1, 2011. For loans obligated before October 1, 2011, the existing 1 percent fee will be charged. Loans obligated after October 1, 2011, will pay the new 1.5 percent fee.

Comment: The proposed fee increase will make it harder for farmers to stay profitable, or ultimately survive. Increasing the fee on guaranteed loans only enhances the probability of default as fees would rise in excess of 350 percent on top of fees that are not being paid by other farmers. As an example, a five-year, $100,000 guaranteed LOC would now cost the operator an additional $3,500 (an extra 0.50 percent in 1 year + 0.75 percent for the remaining four years).

Response: As discussed above, FSA is not implementing the proposed 0.75 percent fee on annual advances for line of credits as presented in the proposed rule. Therefore in the above example ($100,000 loan) the guarantee fee would increase only by $450 ($100,000 loan × 0.90 typical guarantee × 0.005 increase in fee).

Comment: Without the new fee increases, many farmers could survive. However, with the fee increases, it may be the end of the road for many of these producers as they also face weather disasters and higher fuel and fertilizer expenses. With the economic crisis that producers are suffering, the last thing that they need is another expense.

Response: FSA is committed to providing the resources necessary to meet the challenges of rising operating expenses. FSA is aware of the unforeseen weather factors and the current state of the economy. FSA offers relief through loan servicing options and disaster or emergency loan assistance in the event weather conditions or other unforeseen circumstances prevent the borrower from meeting their financial obligations. FSA is dedicated to providing guaranteed credit to as many farmers as possible.

Comment: With higher fees, many farmers are not likely to meet the required loan terms to even qualify for the guaranteed loans. This puts more pressure on the direct loan program funding, which has had budget cuts over the years.

Response: FSA is limited by budgetary constraints and the increase in the guarantee fee is necessary to continue the program. Based on the average fee charged on loans closed in FY 2010, the proposed increase in the fee would equate to an additional $1,272 or $220 annually for a 7 year loan at 5 percent interest. Some operators with minimal cash flow margins will be unable to obtain guaranteed credit and may have to rely on the FSA direct loan program.

Comment: The proposed fee increase is an added expense to farmers and producers that they in turn cannot pass on to someone else.

Response: The guarantee fee is charged to and collected from the lender; however, FSA does allow the fee to be passed on to the borrower and, in practice, the fee is almost always passed on to the borrower and amortized in the loan. While this does increase the borrower's loan payments, budgetary constraints will not allow FSA to guarantee loans without the fee increase. FSA is not implementing the annual continuation fee that had been previously proposed.

Comment: USDA and FSA are taking advantage of a group of producers that do not have other options available to them.

Response: Some operators with minimal cash flow margins will be unable to obtain guaranteed credit. These operators would have the option and opportunity to apply for an FSA direct loan. However, to be able to continue to provide guaranteed credit to those farmers who do qualify for a guaranteed loan, FSA must increase the guarantee fee.

Comment: The fees would directly impact the most vulnerable farmers, namely, those who cannot qualify for receiving commercial loans. These farmers would be the least able to pay the new and higher fees. The result would be that these less credit-worthy farmers would have a very difficult time graduating to commercial credit, assuming they would even be able to remain in business in the first place.

Response: The guarantee fee is waived for loans involving interest assistance, loans where a majority of the funds are used to refinance an Agency direct loan (graduation), loans to beginning or socially disadvantaged farmers involved in the direct Downpayment Loan Program, and loans made through a qualified State Beginning Farmer Program per 7 CFR 762.130(d)(4)(iii)(c).

Comment: It is not fair for FSA to increase guaranteed loan fees as it would negatively impact the borrower's farming operation. FSA can generate additional revenues through some other means than increasing the cost of credit for the family farmers. FSA should find alternative ways to cut costs such as a reduction in staff. By increasing fees, FSA will be losing what presence it has with agricultural lenders not to mention the agriculture borrower.

Response: FSA's source to fund guaranteed loans is the subsidy provided by the budget, which takes into account payments made by the government to the public and payments made to the government by the public. Any savings recognized because of cuts in other areas would not alleviate the anticipated budget constraints within the funding levels of the guaranteed loan program. A reduction in FSA administrative costs, such as salaries, has no impact on the budget authority for loan funds. FSA budget for administrative costs is separate from the budget for funding the guaranteed loan program.

Comment: Increasing loan fees on the FSA guaranteed loan program is inconsistent with the goals of the program, which is to help those farmers and ranchers who could qualify for commercial credit if they had some additional support.

Response: The goal of the guaranteed loan program is to help farmers. By increasing the guarantee fee by only 0.5 percent, FSA will maintain the level of funds available to those farmers who could not qualify for commercial credit without a guaranteed loan. FSA is committed to serving the agriculture credit needs of all eligible farmers and ranchers. The fees charged will be lower than other government loan guarantee programs.

Comment: If the program becomes fee based, FSA would have to increase fees each year in order to provide the same level of funding. Without annual appropriations to support the guaranteed loan program, future fees could range widely from year to year.

Response: Guarantee fees could vary year to year however historically the cost of the guaranteed program has not varied greatly from year to year. FSA anticipates the guarantee fee will vary, but we believe it will not vary widely from year to year.

Comment: FSA should not have the authority to change fees in the future without formal promulgation of a change to the *Code of Federal Regulations.*

Response: The proposed rule provided that the level of fees charged for a guaranteed loan may change in the future without promulgation of a rule to

amend the guaranteed loan regulations. To accurately predict future fee requirements would not be possible, and the change in the fees may be required quickly after the adoption of a budget; therefore, FSA will not publish the fee amount in the regulations and will not change the fee through rulemaking. The guarantee fee will be posted on the FSA Web site at *http://www.fsa.usda.gov/Internet/FSA_File/loanschartoct11.pdf* and available at any FSA office. The guarantee fee will be adjusted when needed based on the budget authority for the fiscal year.

Comment: The Farm Credit System is required by law to provide financial services to young, beginning, and small farmers. Through the use of FSA guarantees, the Farm Credit System is able to provide financing to farmers that might not otherwise be assisted. To the extent the fee increases lessen participation in the Guaranteed Loan Program; the mission of the Farm Credit System is inhibited.

Response: Both FSA and the Farm Credit System are mutually committed to providing agriculture credit to the nation's farmers and ranchers. FSA does not believe the mission of the Farm Credit System will be inhibited by the increase in the guarantee fee. FSA believes that by implementing only the guarantee fee increase, the impact on a few farmers will be minimal when compared to the alternative of a reduction in available funds for all eligible farmers.

Comment: The fees will be a disincentive to attracting new banks into the FSA Guaranteed Loan Program. A number of banks will likely stop using the program and FSA will probably not find support for this fee increase in the banking industry. Fewer farmers and lenders using the program could cause the demise of the program.

Response: FSA believes that only a small percentage of lenders and farmers will choose not to participate, and will not have a significant impact on the sustainability of the program. The Guaranteed Loan Program offers risk management portfolio exposure to lenders. Many lenders value this aspect of the program, and will continue to use our program. Budget constraints will not allow FSA to operate at its current level without the guarantee fee increase.

Comment: The Small Business Administration (SBA) programs have experienced fewer banks and fewer rural customers using the program since increasing their fee structure.

Response: SBA makes direct business loans and guarantees loans to small businesses, as well as loans to victims of natural disasters. SBA also works to get government procurement contracts for small businesses and assists business owners with management and technical assistance and business training. In addition to loans for small business owners, SBA is authorized to provide loans for agriculturally related industries. Many of the customers that work with SBA are different from those customers that work with FSA. Both agencies charge guaranteed loan fees for participation in their programs, which can be passed on to the borrower. However, the fees charged by SBA are much higher than those that would be charged by FSA based on this rule. In both cases, the fees can be financed into the loan and amortized over the life of the loan resulting in minimal costs per year.

Comment: Offer a discount for the Preferred Lender Program (PLP).

Response: PLP was developed to recognize experienced lenders, who have demonstrated expertise in, and understanding of, agricultural lending and the FSA Guaranteed Farm Loan Program. PLP is beneficial to both lenders and FSA. The streamlined loan making and servicing processes in 7 CFR part 762 allow lenders to reduce administrative costs and provide a quick turnaround time and a higher level of service to their customers. These incentives are sufficient. PLP lenders must pay the loan origination fee just like the Standard Eligible Lenders (SEL) and Certified Loan Program (CLP) lenders. We are not making any change in response to this suggestion.

Miscellaneous Conforming Changes

Since the publication of the proposed rule, there have been several Farm Loan Programs rule changes, and a few of those that implemented provisions of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, referred to as ''the 2008 Farm Bill'') require conforming changes in this rule.

The current regulation specifies several guaranteed loan transactions that are not charged the guarantee fee, one of these is loans to farmers involved in the Direct Downpayment Program (see 7 CFR 762.130(d)(4)(iii)(C)). At the time the exemption was established, the exemption was for loans to beginning farmers involved in the Direct Beginning Farmer Downpayment Program. On December 8, 2008, a final rule published in the **Federal Register** (73 FR 74343–74346) implemented provisions of the 2008 Farm Bill required for socially disadvantaged and beginning farmers. The changes to the regulations made by that final rule included expanding and renaming the Downpayment Program to include socially disadvantaged farmers. Therefore, we are making a conforming change by revising and expanding the exception in 7 CFR 762.130(d)(4)(iii)(C) to specify that the guarantee will not be charged for loans to beginning or socially disadvantaged farmers involved in the Direct Downpayment Program (or beginning farmers participating in a qualified State beginning farmer program as discussed below).

In addition, as specified in 7 U.S.C. 1929(i)(3), USDA may ''not charge any person (including a lender) any fee with respect to the provision of any guarantee'' under subsection (i) ''Coordination of Assistance for Qualified Beginning Farmers and Ranchers.'' Subsection (i) addresses requirements related to State beginning farmer programs. As defined in 7 U.S.C. 1929(i)(5), the term ''State beginning farmer program'' means:

> * * * any program that is—
>
> (A) carried out by, or under contract with, a State; and
>
> (B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.

Therefore, we are making a conforming change by revising and expanding the exception in 7 CFR 762.130(d)(4)(iii)(C) to specify that the guarantee will not be charged for loans to beginning farmers participating in a qualified State beginning farmer program.

On September 3, 2010, an interim rule was published in the **Federal Register** (75 FR 54005–54016) implementing the new CL Program, which was established by the 2008 Farm Bill. Therefore, we are making a conforming change by to specify that the guarantee fee also will be calculated for the CL Program guaranteed loans.

Effective Date

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. If the guarantee fee is not increased to 1.5 percent for FY 2012, then FSA will not be able to guarantee any new FOs and very few OLs. Therefore, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. FSA has decided it is appropriate to issue its final policy as an interim rule to give the public more opportunity to

comment on the increase to the one-time guarantee fee and to understand better the need to increase the fee. Publishing this rule as an interim rule allows FSA to increase the guarantee fee and therefore maintain the Guaranteed Loan Program, while allowing time for public comment.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this interim rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. FSA has determined that this rule will not have a significant impact on substantial number of small entities for the reasons explained below. Therefore, FSA has not prepared a regulatory flexibility analysis.

All guarantee fees are charged to and collected from the lender by FSA. FSA allows the fee to be passed on to the applicant and, in practice, the expense is almost always passed on to the borrower or applicant. All FSA guaranteed loan borrowers and all farm entities affected by this rule are small businesses according to U.S. Small Business Administration small business size standards. There is no diversity in size of the entities affected by this rule, and the costs to comply with it are the same for all sizes of entities. The costs of compliance with this rule are expected to be minimal. FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Evaluation

The environmental impacts of this rule have been considered in a manner consistent with provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The changes to the guaranteed loan program that are identified in this rule are administrative in nature. Therefore, FSA has determined that no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies in accordance with 7 CFR part 11 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' This Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not have Tribal implications that preempt Tribal law. FSA will provide government-to-government consultation with Tribal governments to discuss this interim rule. The Tribal consultation will be available through a teleconference. Leadership from all Federally recognized Tribes that have lands within the affected counties will be invited to the consultation. FSA will respond in a timely and meaningful manner to all Tribal government requests for Tribal consultation about this rule and will provide additional avenues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives about ways to improve this rule in Indian country. When Tribal consultation is complete, FSA will analyze the feedback and incorporate any required changes through the final rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are:

10.099—Conservation Loans,
10.406—Farm Operating Loans,
10.407—Farm Ownership Loans.

Paperwork Reduction Act of 1995

The amendments to 7 CFR part 762 in this interim rule require no new collection or changes to the current information collections approved by OMB under the control number 0560–0155.

E–Government Act Compliance

FSA is committed to complying with the E–Government Act, to promote the use of the Internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 762

Agriculture, Credit, Loan programs—Agriculture.

For reasons discussed above, this rule amends 7 CFR part 762 as follows:

PART 762—GUARANTEED FARM LOANS

■ 1. Revise the authority citation for part 762 to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

■ 2. Amend § 762.130 by revising paragraphs (d)(4)(ii) and (d)(4)(iii)(C) to read as follows:

§ 762.130 Loan approval and issuing the guarantee.

* * * * *

(d) * * *

(4) * * *

(ii) The guarantee fee is established by the Agency at the time the guarantee is obligated. The current fee schedule is available at *http://www.fsa.usda.gov* and any FSA office. Guaranteed fees may be adjusted annually based on factors that affect program costs. The nonrefundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds. The guarantee fee for the loan type will be calculated as follows:

(A) FO guarantee fee = Loan Amount × % guaranteed × (FO percentage established by FSA).

(B) OL guarantee fee = Loan Amount × % guaranteed × (OL percentage established by FSA).

(C) CL guarantee fee = Loan Amount × % guaranteed × (CL percentage established by FSA).

(iii) * * *

(C) Loans to beginning or socially disadvantaged farmers involved in the direct Downpayment Loan Program or beginning farmers participating in a qualified State Beginning Farmer Program.

* * * * *

Signed on September 12, 2011.

Bruce Nelson,

Administrator, Farm Service Agency.

[FR Doc. 2011–23724 Filed 9–19–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1163; Directorate Identifier 2009–NM–233–AD; Amendment 39–16795; AD 2011–18–13]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

* * * * *

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

DATES: This AD becomes effective October 25, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 25, 2011.

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 2, 2010 (75 FR 75159), and proposed to supersede AD 2008–10–51, Amendment 39–15535 (73 FR 30752, May 29, 2008). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

To correct this unsafe condition, EASA [European Aviation Safety Agency] issued Emergency AD 2008–0087–E [dated May 8, 2008] to require detailed visual inspections (DVI) of both the left (LH) and right (RH) wing panel rear trailing edge around rib 3 and rib 5 and a subsequent Eddy Current inspection (NDI) [non-destructive inspection] of the same area to detect cracks, follow-up repair actions when cracks are found, and the reporting of all findings. The TC [type certificate] holder has now developed a modification, consisting of the cold expansion of the former lower wing panel CAMLOC holes together with the installation of new attachment material that will prevent the onset of cracks in the affected wing panel.

For the reasons described above, this [EASA] AD retains the inspection and repair requirements of AD 2008–0087–E, which is superseded, adds repetitive inspections and a requirement to modify both the LH and RH wing panel rear trailing edges from rib 3 to rib 9. Modification does not constitute terminating action for the new repetitive inspection requirements of this AD.

The new inspections are eddy current inspections. The modification includes cold expansion of the former lower wing panel CAMLOC holes and installation of new attachment material. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

MCAI Reference Updates

EASA issued AD 2009–0194R1 on March 10, 2011, which was corrected on March 22, 2011. References have been updated in Note 1 and paragraph (p) of this AD to include this revision.

Request to Remove Repetitive Inspection Interval From Paragraph (h) of This AD

Garner CAD Technic Design Organization (GCT DO) Airworthiness Office requested that the 400-flight-cycle repetitive inspection interval be removed from paragraph (h) of the NPRM (75 FR 75159, December 2, 2010). GCT DO Airworthiness Office stated that, based on fatigue data, this repetitive inspection is not required, and is not specified in revised EASA AD 2009–0194R1, dated March 10, 2011, and corrected on March 22, 2011.

We agree. Based on fatigue data, we have determined that the 400-flight-cycle repetitive inspection interval should be removed from paragraph (h) of this AD. The repetitive inspection was removed from revised EASA AD 2009–0194R1, dated March 10, 2011, and corrected on March 22, 2011. Paragraph (h) of this AD has been changed accordingly. References to the 400-flight-cycle repetitive inspections also were removed from paragraphs (i) and (j) of this AD.

To ensure that operators get credit for the most recent inspection done in accordance with Dornier Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 1, both dated May 8, 2008; or 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008; we have clarified paragraph (g) of this AD. We have replaced the phrase, ''in accordance with the requirements of paragraph (h) of this AD,'' with the phrase, ''in accordance with Dornier Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 1, both dated May 8, 2008; or 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008.''

Request for Extended Inspection Interval in Paragraph (i) of This AD

GCT DO Airworthiness Office requested that the initial compliance time and repetitive inspection interval defined in paragraph (i) of the NPRM (75 FR 75159, December 2, 2010) be extended from 800 flight cycles to 1,500 flight cycles. GCT DO Airworthiness Office stated that this extension has been allowed based on fatigue data, and was specified in revised EASA AD 2009–0194R1, dated March 10, 2011, and corrected on March 22, 2011.

We agree to extend the initial compliance time and repetitive inspection intervals for the reasons given by the commenter. Paragraph (i) of this AD has been changed accordingly.

Request To Extend Threshold for Post-Modification Inspections

GCT DO Airworthiness Office requested that based on fatigue data, the threshold for the post-modification initial inspection be extended from 800 flight cycles to 25,000 flight cycles for the Model 328–100 airplane, and from 800 flight cycles to 20,000 flight cycles for Model 328–300 airplanes, and that the repetitive inspections be extended from 800 flight cycles to 1,500 flight cycles.

We agree to extend the threshold for post-modification initial inspections as requested. Based on fatigue data, the referenced EASA AD has included these extensions; therefore, we have added paragraph (k) to the AD to include the new compliance times.

Additional Change to NPRM

The NPRM (75 FR 75159, December 2, 2010) would have allowed issuance of a special flight permit if a crack was found that ''exceeds'' 12.5 mm (0.49 inch). We have changed paragraph (o)(4)(ii) of this AD to change the wording from ''exceeds'' to ''is less than or equal to.''

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 49 products of U.S. registry.

The actions that are required by AD 2008–10–51 and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it will take about 8 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $11,600 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $601,720, or $12,280 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15535 (73 FR 30752, May 29, 2008) and adding the following new AD:

2011–18–13 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–16795. Docket No. FAA–2010–1163; Directorate Identifier 2009–NM–233–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 25, 2011.

Affected ADs

(b) This AD supersedes AD 2008–10–51, Amendment 39–15535 (73 FR 30752, May 29, 2008).

Applicability

(c) This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes; all serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

* * * * *

The new inspections are eddy current inspections. The modification includes cold expansion of the former lower wing panel CAMLOC holes and installation of new attachment material.

Compliance

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

Restatement of Requirements of AD 2008–10–51 (73 FR 30752, May 29, 2008), With Updated Service Information and Removal of Certain Repetitive Inspections

Repetitive Detailed Visual Inspections for Cracks

(g) Within 10 flight cycles, or 10 flight hours, or 7 days, whichever occurs first after June 3, 2008 (the effective date of AD 2008–10–51 (73 FR 30752, May 29, 2008)): Accomplish a detailed visual inspection of both the left-hand (LH) and right-hand (RH) lower wing panel inboard and outboard of flap lever arm 1 (rib 5) for cracks, in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 1, both dated May 8, 2008, as applicable; or 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008, as applicable. After the effective date of this AD, use only 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008, as applicable. If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 50 flight hours. If any crack is detected, before further flight, do an eddy current inspection, in accordance with Dornier Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 1, both dated May 8, 2008, as applicable; or 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008, as applicable.

Eddy Current Inspections for Cracks

(h) Except as required by paragraph (g) of this AD, within 400 flight hours or 3 months after June 3, 2008, whichever occurs first: Accomplish an eddy current inspection for cracking of both the LH and RH lower wing panel in the vicinity of rib 3 and inboard and outboard of flap lever arm 1 (rib 5), in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 1, both dated May 8, 2008, as applicable; or 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008, as applicable. After the effective date of this AD, use only 328 Support Services Alert Service Bulletin ASB–328J–57–015 or ASB–328–57–037, both Revision 2, both dated May 20, 2008, as applicable. Accomplishment of the eddy current inspection terminates the detailed visual inspection required by paragraph (g) of this AD.

New Requirements of This AD

New Repetitive Intervals for Eddy Current Inspections

(i) Within 1,500 flight cycles after the most recent eddy current inspection done in accordance with the applicable service bulletin listed in table 1 of this AD, or within 60 days after the effective date of this AD, whichever occurs later, do an eddy current inspection for cracking of the lower wing panel (outside) around the flap lever arm 1 (rib 5), in accordance with the Accomplishment Instructions of 328 Support Services Alert Service Bulletin ASB–328–57–037 (for Model 328–100 airplanes) or ASB–328J–57–015 (for Model 328–300 airplanes), both Revision 2, both dated May 20, 2008. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles, except as provided by paragraph (k) of this AD.

TABLE 1—SERVICE BULLETINS

Service Bulletin	Revision	Date
Dornier Alert Service Bulletin ASB–328–57–037	1	May 8, 2008.
Dornier Alert Service Bulletin ASB–328J–57–015	1	May 8, 2008.
328 Support Services Alert Service Bulletin ASB–328–57–037	2	May 20, 2008.
328 Support Services Alert Service Bulletin ASB–328J–57–015	2	May 20, 2008.

Inspection and Modification of Lower Wing Panel

(j) Within 24 months after the effective date of this AD, do an eddy current inspection for cracking of the lower wing panel (outside) around the flap lever arm 1 (rib 5). If no cracking is found, within 24 months after the effective date of this AD, modify the lower wing panel by doing a cold expansion of the CAMLOC holes and installing new attachment material from rib 9 LH to rib 9 RH. Do all actions required by this paragraph in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–57–481 (for Model 328–100 airplanes) or SB–328J–57–230 (for Model 328–300 airplanes), both Revision 1, both dated October 15, 2009.

(k) After the modification required by paragraph (j) is done, do the eddy current inspection required by paragraph (i) of this AD at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. Repeat the inspections thereafter at the intervals specified in paragraph (i) of this AD.

(1) For Model 328–100 airplanes: Within 25,000 flight cycles after accomplishing the modification specified in paragraph (j) of this AD.

(2) For Model 328–300 airplanes: Within 20,000 flight cycles after accomplishing the modification specified in paragraph (j) of this AD.

Repair

(l) If any cracking is found during any inspection required by this AD, before further flight contact 328 Support Services GmbH for repair instructions and do the repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent).

Inspections Accomplished According to Previous Issues of Service Bulletins

(m) Inspections accomplished before the effective date of this AD according to Dornier Alert Service Bulletin ASB–328–57–037 or Dornier Alert Service Bulletin ASB–328J–57–015, both Revision 1, both dated May 8, 2008, as applicable, are considered acceptable for compliance with the inspection requirements of paragraphs (i) and (j) of this AD.

Report

(n) At the applicable times specified in paragraphs (n)(1) and (n)(2) of this AD: Send 328 Support Services GmbH a report of findings (both positive and negative) found during each inspection required by paragraphs (g), (h), (i), and (j) of this AD. The report must include the inspection results, a description of any cracks found, the airplane serial number, and the number of landings and flight hours on the airplane. Send the report to 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; Telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail: *gsc.op@328support.de.*

(1) For any inspection done on or after the effective date of this AD: Within 30 days after the inspection.

(2) For any inspection done before the effective date of this AD: Within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

EASA Airworthiness Directive 2009–0194R1, dated March 10, 2011, corrected March 22, 2011, gives credit for eddy current inspections conducted in accordance with the maintenance review board tasks. We are not giving credit for those inspections.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

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

(4) *Special Flight Permits:* Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of paragraphs (g), (h), (i), (j), (k), and (l) of this AD can be done if the following conditions are met:

(i) The initial inspection required by paragraph (g) of this AD must be accomplished.

(ii) If a crack indication is less than or equal to 12.5 mm (0.49 inch), the Manager, International Branch, ANM–116, concurs with issuance of the special flight permits.

Related Information

(p) Refer to MCAI EASA Airworthiness Directive 2009–0194R1, dated March 10, 2011, corrected March 22, 2011, and the service bulletins listed in table 2 of this AD, for related information.

TABLE 2—RELATED SERVICE BULLETINS

Service Bulletin	Revision	Date
328 Support Services Alert Service Bulletin ASB–328–57–037	2	May 20, 2008.
328 Support Services Alert Service Bulletin ASB–328J–57–015	2	May 20, 2008.
328 Support Services Service Bulletin SB–328–57–481	1	October 15, 2009.
328 Support Services GmbH Service Bulletin SB–328J–57–230	1	October 15, 2009.

Material Incorporated by Reference

(q) You must use the service information contained in table 3 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 3—ALL MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
328 Support Services Alert Service Bulletin ASB–328–57–037	2	May 20, 2008.
328 Support Services Alert Service Bulletin ASB–328J–57–015	2	May 20, 2008.
328 Support Services Service Bulletin SB–328–57–481	1	October 15, 2009.
328 Support Services GmbH Service Bulletin SB–328J–57–230	1	October 15, 2009.

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

(2) For service information identified in this AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail *gsc.op@328support.de;* Internet *http://www.328support.de.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 19, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22032 Filed 9–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0221; Directorate Identifier 2010–NM–120–AD; Amendment 39–16805; AD 2011–18–23]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–50 series airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–60 series airplanes; Model DC–8–60F series airplanes; Model DC–8–70 series airplanes; and Model DC–8–70F series airplanes. This AD requires repetitive high frequency eddy current or repetitive low frequency eddy current inspections for cracks on the area around certain fasteners of the access opening doubler on the left and right wing center spar lower cap, and repair, if necessary. This AD was prompted by reports that cracks in the center spar lower cap and, in some cases, the web of the spar, have been found at stations Xrs = 168.00, Xrs = 251.00, and Xrs = 358.00. We are issuing this AD to detect and correct cracks in the area around certain fasteners of the access opening doubler on the left and right wing center spar lower cap, which could compromise the structural integrity of the wing structure.

DATES: This AD is effective October 25, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 25, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5222; fax: (562) 627–5210; e-mail: *dara.albouyeh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on March 15, 2011 (76 FR 13926). That NPRM proposed to require repetitive high frequency eddy current or repetitive low frequency eddy current inspections for cracks on the area around certain fasteners of the access opening doubler on the left and right wing center spar lower cap, and repair, if necessary.

Comments

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

Request To Revise Paragraph (h)(3) of the NPRM

Boeing requested that we revise paragraph (h)(3) of the NPRM (76 FR 13926, March 15, 2011) to refer to ''Method 101 and 104,'' instead of ''Method 101 or 104.'' Boeing explained that Methods 101 and 104 should be used when using Section 57–10–16 of the McDonnell Douglas DC–8 Supplemental Inspection Document (SID) Report L26–011, Volume II, Revision 8, dated January 2005. Boeing stated that ''Method 101 and 104'' is correctly referenced in the service information.

We agree. We have clarified the reference as ''Methods 101 and 104'' in paragraph (h)(3) of the final rule for the reasons stated by Boeing.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously.

We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD would affect 41 airplanes of U.S. registry. We also estimate that it will take 12 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $41,820, or $1,020 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–18–23 The Boeing Company: Amendment 39–16805; Docket No. FAA–2011–0221; Directorate Identifier 2010–NM–120–AD.

Effective Date

(a) This AD is effective October 25, 2011.

Affected ADs

(b) This AD affects certain requirements of AD 2008–25–05, Amendment 39–15763 (73 FR 78936, December 24, 2008).

Applicability

(c) This AD applies to all The Boeing Company Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD was prompted by reports that cracks in the center spar lower cap and, in some cases, the web of the spar, have been found at stations Xrs = 168.00, Xrs = 251.00, and Xrs = 358.00. The Federal Aviation Administration is issuing this AD to detect and correct cracks in the area around certain fasteners of the access opening doubler on the left and right wing center spar lower cap, which could compromise the structural integrity of the wing structure.

Compliance

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

Inspection

(g) Before the accumulation of 20,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, do a high frequency eddy current (HFEC) or low frequency eddy current (LFEC) inspection for cracks on the area around certain fasteners of the access opening doubler on the left and right wing center spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–57A103, dated May 5, 2010. If no crack is found, repeat the inspection thereafter at the applicable interval specified in paragraph 1.E., ''Compliance'' of Boeing Alert Service Bulletin DC8–57A103, dated May 5, 2010.

Repair

(h) If any crack is found during any inspection required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) Before further flight, repair the crack in accordance with Boeing Alert Service Bulletin DC8–57A103, dated May 5, 2010.

(2) Within 6,000 flight cycles after doing the most recent HFEC inspection, or within 1,750 flight cycles after doing the most recent LFEC inspection; as applicable; do the inspection specified in paragraph (g) of this AD of the non-repaired area, and repeat the inspection of the non-repaired area thereafter at the applicable time in paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin DC8–57A103, dated May 5, 2010.

(3) Within the applicable times specified in paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin DC8–57A103, dated May 5, 2010, do the inspections of the repaired area, using the inspection defined in Method 101 of Section 57–10–06, ''Lower Center Space Cap Flanges (FWD & AFT) from STA Xrs = 100 to 290,'' or Methods 101 and 104 of Section 57–10–16, ''Lower Center Space Cap Flanges (FWD & AFT) from STA Xrs = 100 to 290,'' of the McDonnell Douglas DC–8 Supplemental Inspection Document (SID), Report L26–011, Volume II, Revision 8, dated January 2005, as applicable. Repeat the inspection thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin DC8–57A103, dated May 5, 2010. If any crack is found, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) The inspections required by paragraph (h)(3) of this AD constitute compliance with paragraph (j) of AD 2008–25–05 for the repaired area. All requirements of AD 2008–25–05 that are not specifically referenced in this paragraph remain fully applicable and require compliance.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Related Information

(k) For more information about this AD, contact Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5222; fax: (562) 627–5210; e-mail: *dara.albouyeh@faa.gov.*

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin DC8–57A103, dated May 5, 2010; and McDonnell Douglas DC–8 Supplemental Inspection Document (SID), Report L26–011, Volume II, Revision 8, dated January 2005; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. The current revision of the McDonnell Douglas DC–8 SID, Report L26–011, Volume II, Revision 8, dated January 2005, is specified on only the title page and List of Effective Pages of the document; the cover page of this document does not specify a revision of date.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–23709 Filed 9–19–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR parts 200, 232, 240 and 249

[Release Nos. 33–9259; 34–65343; IC–29788; File No. S7–10–09]

RIN 3235–AK27

Facilitating Shareholder Director Nominations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; notice of effective date.

SUMMARY: This release provides notice of the effective date of the amendment to Exchange Act Rule 14a–8, the shareholder proposal rule, which will require companies to include in their proxy materials, under certain circumstances, shareholder proposals that seek to establish a procedure in the company's governing documents for the inclusion of one or more shareholder director nominees in the company's proxy materials. This release also provides notice of the effective date of related rule changes adopted concurrently with the amendment to Rule 14a–8.

DATES: The effective date of the additions of § 200.82a, § 240.14a–18, § 240.14n–1 through § 240.14n–3, and § 240.14n–101, and the amendments to § 232.13, § 240.13a–11, § 240.13d–1, § 240.14a–2, § 240.14a–4, § 240.14a–5, § 240.14a–6, § 240.14a–8, § 240.14a–9, § 240.14a–12, § 240.15d–11, § 240.13d–102, § 240.14a–101, and § 249.308, published on September 16, 2010 (75 FR 56668), is September 20, 2011. Section 240.14a–11 was vacated by the United States Court of Appeals for the District of Columbia Circuit (No. 10–1305, July 22, 2011) and therefore is not effective.

FOR FURTHER INFORMATION CONTACT: Tamara Brightwell, Lillian Brown, or Ted Yu, Division of Corporation Finance, at (202) 551–3200, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: By order dated October 4, 2010 (Release No. 33–9149, 34–63031, IC–29456), the Securities and Exchange Commission stayed from November 15, 2010 until the resolution of the petition for review of Exchange Act Rule 14a–11 in *Business Roundtable et al.* v. *Securities and Exchange Commission,* No. 10–1305 (D.C. Cir., filed Sept. 29, 2010), the effective and compliance dates of amendments to the Federal proxy and related rules that the Commission adopted to facilitate the effective exercise of shareholders' traditional state law rights to nominate and elect directors to company boards of directors. On October 20, 2010, a notice of the stay was published in the **Federal Register** (75 FR 64641). That announcement stated that a notice of the effective and compliance dates of the final rules would be published in the **Federal Register** following the resolution of the petition for review. On July 22, 2011, the United States Court of Appeals for the District of Columbia Circuit issued an order vacating Rule 14a–11 and on September 14, 2011, the Court issued its mandate. Because the mandate concludes the litigation in the Court of Appeals, the stay expired by its terms. The Court's order did not affect the amendment to Rule 14a–8, which was not challenged in the litigation, or the related rules and amendments adopted concurrently with Rule 14a–11 and the amendment to Rule 14a–8. Accordingly, those rules and amendments are effective upon publication of this notice in the **Federal Register**.

As discussed in the preamble above, the final rules noted in the **DATES** section of this document and published on September 16, 2010 (75 FR 56668) amending Title 17, Chapter II of the Code of Federal Regulations, are effective September 20, 2011, with the exception, as noted, of Rule 14a–11 (17 CFR 240.14a–11).

Dated: September 15, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24118 Filed 9–19–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–29–000; Order No. 753]

Electric Reliability Organization Interpretation of Transmission Operations Reliability Standard

September 15, 2011.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Under section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission approves the North American Electric Reliability Corporation's proposed interpretation of Reliability Standard, TOP–001–1, Requirement R8, which pertains to the restoration of real and reactive power during a system emergency.

DATES: *Effective Date:* This rule will become effective November 21, 2011.

FOR FURTHER INFORMATION CONTACT:
Robert T. Stroh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8473.
Eugene Blick (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8066.
David O'Connor (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–6695.

SUPPLEMENTARY INFORMATION: Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Final Rule

1. Under section 215 of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission approves the North American Electric Reliability Corporation's (NERC) proposed interpretation of Requirement R8 in Commission-approved NERC Reliability Standard TOP–001–1—Reliability Responsibilities and Authorities.

I. Background

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Approved Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently.

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO[2] and, subsequently, certified NERC as the ERO.[3] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard TOP–001–1.[4]

4. NERC's Rules of Procedure provide that a person that is ''directly and materially affected'' by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[5] The ERO's ''standards process manager'' will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules provide that, within 45 days, the team will draft an interpretation of the Reliability Standard, with subsequent balloting. If approved by ballot, the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authority for regulatory approval.

A. Reliability Standard TOP–001–1

5. Reliability Standard TOP–001–1 (Reliability Responsibilities and Authorities) centers on the responsibilities of balancing authorities and transmission operators during a system emergency. Specifically, the stated purpose of Reliability Standard TOP–001–1 is to ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency. Requirement R8 of the standard provides:

> During a system emergency, the Balancing Authority and Transmission Operator shall immediately take action to restore the Real and Reactive Power Balance. If the Balancing Authority or Transmission Operator is unable to restore Real and Reactive Power Balance it shall request emergency assistance from the Reliability Coordinator. If corrective action or emergency assistance is not adequate to mitigate the Real and Reactive Power Balance, then the Reliability Coordinator, Balancing Authority, and Transmission Operator shall implement firm load shedding.[6]

B. NERC Proposed Interpretation

6. On July 16, 2010, NERC submitted its petition for approval for an interpretation of Requirement R8 in Commission-approved Reliability Standard TOP–001–1. The Petition explains that NERC received a request from Florida Municipal Power Pool (FMPP) seeking an interpretation of Reliability Standard TOP–001–1, Requirement R8. Specifically, FMPP requested clarification on several aspects of Requirement R8. FMPP asked the following:

> Balancing real power is not a function of a [Transmission Operator] and balancing reactive power is not a function of a [Balancing Authority]. For Requirement R8 is the Balancing Authority responsibility to immediately take corrective action to restore Real Power Balance and is the [Transmission Operator] responsibility to immediately take corrective action to restore Reactive Power Balance?[7]

7. Consistent with the NERC Rules of Procedure, NERC stated that it assembled a team to respond to the request for interpretation and presented the proposed interpretation to industry ballot, using a process similar to the process it uses for the development of Reliability Standards.[8]

8. In response to FMPP's interpretation request, NERC provided the following:

> The answer to both questions is yes. According to the NERC Glossary of Terms Used in Reliability Standards, the Transmission Operator is responsible for the reliability of its ''local'' transmission system, and operates or directs the operations of the transmission facilities. Similarly, the Balancing Authority is responsible for maintaining load-interchange-generation balance, i.e., real power balance. In the context of this requirement, the Transmission Operator is the functional entity that balances reactive power. Reactive power balancing can be accomplished by issuing instructions to the Balancing Authority or Generator Operators to alter reactive power injection. Based on NERC Reliability Standard BAL–005–1b Requirement R6, the Transmission Operator has no requirement to

[1] 16 U.S.C. 824o (2006).

[2] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, order on reh'g, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[3] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[4] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[5] NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure, Version 6.1, at 27–29 (2010).

[6] Reliability Standard TOP–001–1, Requirement R8.

[7] NERC Petition at 5.

[8] NERC Reliability Standards Development Procedure at 27–29.

compute an Area Control Error (ACE) signal or to balance real power. Based on NERC Reliability Standard VAR–001–1 Requirement R8, the Balancing Authority is not required to resolve reactive power balance issues. According to TOP–001–1\ Requirement R3, the Balancing Authority is only required to comply with Transmission Operator or Reliability Coordinator instructions to change injections of reactive power.[9]

NERC stated that the interpretation was developed and approved by industry stakeholders and approved by the NERC Board of Trustees (Board).

9. The NERC petition explained that the interpretation is consistent with the stated purpose of the Reliability Standard, which is to ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency. NERC added that the interpretation clarifies the responsibilities of balancing authorities and transmission operators during a system emergency by referencing the *NERC Glossary of Terms Used in Reliability Standards* as well as other relevant Reliability Standards.[10]

10. On February 14, 2011, NERC made a supplemental filing in response to a Commission staff data request.[11] With regard to whether Requirement R8 obligates a joint response in a system emergency, NERC explained that Requirement R8 does not use the word ''joint'' or otherwise infer joint responsibility during system emergencies. Rather, NERC responded that the balancing authority and transmission operator have separate responsibilities to restore real and reactive power balance during system emergencies. NERC also stated that the use of ''and'' between the two entities should not construe communication or coordination. NERC added that the Blackout Report [12] correctly identifies communication and coordination issues as reliability issues and that communication and coordination are addressed in the Communications (COM) Reliability Standards.[13]

II. Notice of Proposed Rulemaking

11. On April 21, 2011, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve NERC's interpretation of Reliability Standard TOP–001–1, Requirement R8.[14] In the NOPR, the Commission stated that it believed that the ERO has presented a reasonable interpretation consistent with the language of the Reliability Standard. In addition, the NOPR noted that a balancing authority and transmission operator each have coordination and communication functions that are necessary for maintaining real and reactive power balance.

12. In response to the NOPR, NERC filed comments supporting the Commission's proposed approval of the interpretation. No comments were filed opposing the Commission's proposal to approve NERC's interpretation.

III. Commission Determination

13. The Commission adopts the NOPR proposal and approves the interpretation of TOP–001–1, Requirement R8. The Commission finds that NERC's interpretation is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

14. The interpretation supports the stated purpose of the Reliability Standard, i.e., ensuring that reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency.[15] The interpretation also clarifies the responsibilities of a balancing authority and transmission operator during a system emergency. Further, the language is consistent with the language of the requirement. Accordingly, the Commission approves the ERO's interpretation of TOP–001–1, Requirement R8.

15. We agree, as discussed in the interpretation, that the balancing authority is responsible for restoring real power balance during a system emergency and the transmission operator is responsible for restoring reactive power balance during a system emergency. However, during a system emergency, communication and coordination between the transmission operator and balancing authority can be essential to restore real and reactive power balance. For example, during an emergency, the balancing authority may rely on the real power output of a generator to fulfill its responsibility, while the transmission operator may expect the same generator unit to reduce real power to generate greater reactive power output.[16]

16. NERC acknowledges the need for such communication and coordination.[17] NERC maintains that this coordination and communication is required through two currently-effective Communication Reliability Standards: (1) COM–001–1.1—Telecommunications and (2) COM–002–2—Communication and Coordination.[18]

17. We agree with NERC that the currently effective COM Reliability Standards provide for such communication and coordination. For example, Reliability Standard COM–002–2, Requirement R1 provides that transmission operators, balancing authorities and generator operators must have communication links with one another and must be staffed to address a real-time emergency. Reliability Standard EOP–001–0, Requirements R3, R4.3, and R7 also contain provisions relevant to the need for communication and coordination in emergencies.[19] These provisions require balancing authorities and transmission operators to develop plans to mitigate operating emergencies including coordination among adjacent transmission operators and balancing authorities.

18. Accordingly, for the reasons discussed above, we approve NERC's proposed interpretation of TOP–001–1, Requirement R8.

IV. Information Collection Statement

19. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[20] The information contained here is also

[9] *Id.* at 5–6.

[10] *Id.* at 6.

[11] Response of the North American Electric Reliability Corporation to Request for Additional Information Regarding Interpretation to Reliability Standard TOP–001–1, Requirement R8 (NERC Response).

[12] *Final Report on the August 14, 2003 Blackout in the United States and Canada* (Blackout Report).

[13] NERC Response at 4–7.

[14] *Electric Reliability Organization Interpretation of Transmission Operations Reliability Standard,* Notice of Proposed Rulemaking, 76 FR 23222 (Apr. 26, 2011), FERC Stats. & Regs. ¶ 32,674 (2011) (NOPR).

[15] *Id.* at 6.

[16] The Blackout Report described such a scenario, explaining that a generator unit tripped because the unit's protection system detected the VAR output, i.e., reactive power, exceeded the unit's capability. Blackout Report at 27. The Blackout Report also explained that no generator units were asked to reduce their real power output to produce more reactive power. *Id.* at 47.

[17] NERC Response at 6–7.

[18] NERC Response at 6–7. NERC also identifies several ongoing Reliability Standards projects that are intended to strengthen the requirements pertaining to communication and coordination between entities.

[19] *See* NOPR, FERC Stats. & Regs. ¶ 32,674 at P 14. On July 13, 2011, the Commission approved EOP–001–2 Reliability Standard, replacing EOP–001–0 effective July 1, 2013. *Mandatory Reliability Standards for Interconnection Reliability Operating Limits; System Restoration Reliability Standards,* 136 FERC ¶ 61,030 (2011). The applicable Requirements in EOP–001–2 relevant to the need for communication and coordination in emergencies are Requirements R2, R3.3, and R6.

[20] 5 CFR 1320.11.

subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[21]

20. As stated above, the Commission approved, in Order No. 693, Reliability Standard TOP–001–1 that is the subject of the current rulemaking. This Final Rule approves the interpretation of the previously approved Reliability Standard, which was developed by NERC as the ERO. The interpretation, as clarified, relates to an existing Reliability Standard, and the Commission does not expect it to affect entities' current reporting burden.[22] Accordingly, we will submit this Final Rule to OMB for informational purposes only.

21. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873].

V. Environmental Analysis

22. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[23] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[24] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Regulatory Flexibility Act

23. The Regulatory Flexibility Act of 1980 (RFA)[25] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a final rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[26] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[27] The RFA is not implicated by this Final Rule because the interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

24. The Commission approved Reliability Standard TOP–001–1 in 2007 in Order No. 693. The Final Rule in the immediate docket addresses an interpretation of Requirement R8 of previously-approved TOP–001–1. The interpretation clarifies current compliance obligations of balancing authorities and transmission operators and therefore, does not create an additional regulatory impact on small entities.

VII. Document Availability

25. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

26. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

27. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Effective Date and Congressional Notification

28. These regulations are effective November 21, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24088 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

[21] 44 U.S.C. 3507(d).

[22] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1901–1907.

[23] *Regulations Implementing the National Environmental Policy Act* of 1969, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[24] 18 CFR 380.4(a)(2)(ii).

[25] 5 U.S.C. 601–612.

[26] 13 CFR 121.101.

[27] 13 CFR 121.201, Section 22, Utilities, & n.1.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2011–OS–0004]

32 CFR Part 311

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Office of the Secretary of Defense is exempting those records contained in DMDC 14 DoD, entitled ''Defense Clearance and Investigations Index (DCII)'', pertaining to investigatory material compiled for law enforcement purposes to enable OSD components to conduct certain investigations and relay law enforcement information without compromise of the information, protect investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence. The exemption will allow DoD to provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence. Further,

requiring OSD to grant access to records and agency rules for access and amendment of records would unfairly impede the investigation of allegations of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

This direct final rule makes nonsubstantive changes to the Office of the Secretary Privacy Program rules. These changes will allow the Department to add an exemption rule to the Office of the Secretary of Defense Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This change will allow the Department to move part of the Department's personnel security program records from the Defense Security Service Privacy Program to the Office of the Secretary of Defense Privacy Program. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the applicable records and/or material when the purposes underlying the exemption(s) are valid and necessary.

This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule will be effective on November 29, 2011 unless comments are received that would result in a contrary determination. Comments will be accepted on or before November 21, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: This direct final rule is consistent with the rule currently published at 32 CFR part 321.13(h) and another rule is being published to remove and reserve 321.13(h).

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, 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 set forth in these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 522a).

■ 2. Section 311.8 is amended by adding paragraph (c)(20) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(20) System identifier and name: DMDC 14 DoD, Defense Clearance and Investigations Index.

(i) *Exemptions:* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled

by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subjections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I) and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because it will enable OSD components to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring OSD to grant access to records and agency rules for access and amendment of records would unfairly impede the investigation of allegations of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23758 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0857]

RIN 1625–AA11

Regulated Navigation Area; Saugus River, Lynn, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of the Saugus River in Lynn, Massachusetts. This temporary rule allows the Coast Guard to suspend all vessel traffic within the regulated area to allow for stabilization operations that could pose a safety hazard to vessels operating in the area. This temporary rule is necessary to enhance vessel safety, marine environmental protection, and provide for the safety of life on the navigable waters during the removal of a damaged section of the Energy Systems Pipeline Bridge at Mile 2.3 of the Saugus River.

DATES: This rule is effective in the CFR on September 20, 2011 until 5 p.m. on November 9, 2011. This rule is effective with actual notice for purposes of enforcement from 8 a.m. on September 12, 2011 until 5 p.m. on November 9, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0857 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0857 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Mark Cutter, U.S. Coast Guard Sector Boston Waterways Management Division, Coast Guard; telephone 617–223–4000, e-mail *Mark.E.Cutter@uscg.mil,* or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, e-mail *Isaac.M.Slavitt@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:

Regulatory Information

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedures 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; notice and comment is impracticable because immediate action is necessary to ensure the safety of the public in the vicinity of construction operations being conducted in the Saugus River.

Serious damage to this pipeline bridge was caused during Tropical Storm Irene, which passed through Boston on 28 August, 2011. Currently, the pipeline is leaning over precariously and is in danger of collapsing. Two phases of work are needed for this pipeline: stabilization (which may include removal of the damaged segment), and then full removal at a later date. This rule addresses only emergency stabilization efforts. A separate rule will be promulgated with normal notice and comment periods for the longer term full repair project.

On September 1, 2011, General Electric, the pipeline operators, advised that the Energy Systems Pipeline bridge demolition project would require periodic closures of the Saugus River at mile 2.3 to remove the damaged piping support structure. The hazard that the damaged portion of the Energy Systems Pipeline bridge poses to the navigational channel necessitates that all mariners comply with this RNA. Immediate action is needed to control vessels operating in the restricted waterway in order to facilitate repairs and to protect the maritime public from the hazards associated with the stabilization of this damaged structure. Publishing a NPRM and waiting 30 days for comment would be contrary to the public interest since immediate action is needed to restrict

vessel traffic to effect repairs and to protect the maritime public from the hazards associated with removal of the damaged section of the structure, including falling debris and the use of heavy machinery.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective fewer than 30 days after publication in the **Federal Register**. Any delay would be both impracticable and contrary to the public interest. Immediate action is necessary for the reasons discussed above, supporting good cause under 5 U.S.C. 553(b)(B).

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this temporary rule is to facilitate the removal of the damaged piping support structure for the Energy Systems Pipeline Bridge located at approximately mile 2.3 of the Saugus River in Lynn, MA. Establishing this temporary rule will allow the necessary stabilization work to be completed and will protect the maritime public from the hazards associated with the demolition of this damaged structure. This structure is in danger of collapse and its stabilization allows for the future safe transit of vessels in the area.

Discussion of Rule

This action is intended to prohibit vessel traffic on a portion of the Saugus River, when necessary for the safety of navigation, while work is done on the Energy Systems Pipeline Bridge on the Saugus River in Lynn, MA. The regulated area encompasses all waters within 100 yards of either side of the Energy Systems Pipeline Bridge. The Coast Guard may close the area described in this rule to all vessel traffic during any circumstance, planned or unforeseen, that poses a threat to waterway users operating in the area. Complete waterway closures will be made with as much advance notice as possible.

The project consists of stabilization, cutting and removal of damaged abandoned pipeline and associated steel support structure. Demolition operations will temporarily block the navigable channel due to positioning of a barged-based lifting crane, a deck barge, and an associated towing vessel.

Entry into this RNA during a closure is prohibited unless authorized by the Sector Boston Captain of the Port (COTP). In the event of an emergency, all construction equipment shall be removed from the channel to allow for emergency vessels to pass. Any violation of this rule is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant-mariner credentials.

The Captain of the Port (COTP) Boston will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by all appropriate means for the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule will be severely limited for the following reasons: (1) The actual waterway restriction imposed by this RNA is expected to last no longer than 12 hours at a time; (2) demolition work that restricts the navigational channel will be scheduled when there is limited demand for this navigational channel; and (3) advance notification will be made to the maritime community via Local Notice to Mariners, Broadcast Notice to Mariners, and on the Internet at *http://homeport.uscg.mil/boston.*

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in a portion of the Saugus River during periods of construction until the Energy Systems Pipeline bridge has been structurally stabilized. Several small marinas up-river from the damaged pipeline may also be affected.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: although the regulated navigation area will apply to the entire width of the Saugus River navigational channel, restriction of vessel traffic will be limited to not more than 12 hours at a time and response to traffic demand will be coordinated in advance by the Captain of the Port Boston in consultation with the harbormaster of Lynn, MA. Before the effective period, we will issue maritime advisories widely available to users of the waterway. Additionally, because of the dangerous and unstable nature of the damaged pipeline, many vessel operators may have independently reached the conclusion that it is too dangerous to pass underneath. Therefore, the inherent danger of the damaged pipeline is probably already preventing vessel operators from passing through.

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.

Assistance for Small Entities

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

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a RNA. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0857 to read as follows:

§ 165.T01–0857 Regulated Navigation Area; Saugus River, Lynn MA.

(a) *Regulated Area.* The following area is a regulated navigation area: all waters within 100 yards of either side of the Energy Systems Pipeline Bridge at approximately mile 2.3 of the Saugus River in position 42°26′56″ N, 070° 58′31″ W, in Lynn, MA. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.13 apply.

(2) No vessel may enter or transit through the regulated area during enforcement periods without the express permission of the Captain of the Port (COTP) Boston.

(3) Vessels transiting through the RNA with COTP permission are required to do so at reduced speed so as to produce no wake. Vessels transiting through the RNA with COTP permission must still remain at least 150 feet away from all demolition equipment.

(c) *Effective Period.* This rule is effective from 8 a.m. on September 12, 2011 until 5 p.m. on November 9, 2011.

(d) *Enforcement Period.* This rule will be enforced when necessary for construction operations. The COTP Boston will cause notice of enforcement periods to be made by reasonable means, which may include but are not limited to a Broadcast Notice to Mariners.

Dated: September 9, 2011.

D. A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2011–24051 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0847]

RIN 1625–AA00

Safety Zone; Ryder Cup Captain's Duel Golf Shot, Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chicago River near Chicago, Illinois. This zone is intended to restrict vessels from a portion of the Chicago River during a golfing event that will involve hitting golf balls from land onto a stationary barge in the river. This temporary safety zone is necessary to protect the public and their vessels from the hazards associated with golf balls being hit from land onto a stationary barge in the river.

DATES: This regulation is effective from 4 p.m. until 5 p.m. on September 26, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0847 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0847 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or e-mail BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at (414) 747–7148 or *Adam.D.Kraft@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 an 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 notice of this golfing event was not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would prevent the Coast Guard from protecting the public and vessels on navigable waters from the hazards associated with golf balls being hit from land onto a stationary barge in the river.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30-day notice period would also be impracticable and contrary to the public interest.

Background and Purpose

The Ryder Cup Captain's Duel Golf Shot event takes place on the Chicago River near Chicago, Illinois from 4 p.m. to 5 p.m. on September 26, 2011. The Captain of the Port, Sector Lake Michigan has determined that this event may present significant hazards to public safety and property due to the fact that six golf balls will be hit from the 16th floor of the Trump Tower, onto a stationary barge located in the middle of the Chicago River.

Discussion of Rule

Because of the aforesaid hazards, the Captain of the Port, Sector Lake Michigan has determined that a temporary safety zone is necessary to ensure the safety of spectators and vessels during the golfing event. The safety zone will encompass all waters of the Chicago River, near Chicago, Illinois, between the North Columbus Drive Bascule Bridge, located at approximate position 41°53′19″ N, 087°37′13″ W and the Michigan Avenue bridge, located at approximate position 41°53′21″ N, 087°37′28″ W. (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule 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 Chicago River, Chicago, IL between 4 p.m. and 5 p.m. on September 26, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the safety zone will only be in effect for one hour on a single day and vessels will be allowed to pass through the safety zone when no conditions exist. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because this rule involves the establishment of a safety zone.

A final environmental analysis checklist and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0847 to read as follows:

§ 165.T09–0847 Safety Zone; Ryder Cup Captain's Duel Golf Shot, Chicago River, Chicago, Illinois.

(a) *Location.* The safety zone will encompass all waters of the Chicago River, near Chicago, Illinois, between the North Columbus Drive Bascule Bridge, located at approximate position 41°53′19″ N, 087°37′13″ W and the Michigan Avenue bridge, located at approximate position 41°53′21″ N, 087°37′28″ W. (NAD 83).

(b) *Effective and enforcement period.* This regulation is effective and will be enforced from 4 p.m. until 5 p.m. on September 26, 2011. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may terminate the enforcement of this safety zone at any time before the 5 p.m. on September 26, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(3) The ''designated representative'' of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The designated representative of the Captain of the Port, Sector Lake Michigan, will be on the Trump Tower with event participants and will have constant radio communication with the Safety and Patrol vessels which will be provided by the Chicago Police Marine Unit.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

Dated: September 8, 2011.

M. W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–24142 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0721]

RIN 1625–AA00

Safety Zone; Giannangeli Wedding Fireworks, Lake St. Clair, Harrison Township, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake St. Clair, Harrison Township, MI. This zone is intended to restrict vessels from a portion of Lake St. Clair during the Giannangeli Wedding Fireworks.

DATES: This rule is effective and will be enforced from 10 p.m. through 10:30 p.m. on September 24, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0721 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0721 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lt. Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, e-mail *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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. Notice of this fireworks display was not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

Background and Purpose

On September 24, 2011, a private party is holding a land based wedding that will include fireworks launched from a point on Lake St. Clair. The fireworks display will occur between 10 p.m. and 10:30 p.m., September 24, 2011. The Captain of the Port Detroit has determined that fireworks displays launched on or in the vicinity of navigable waters pose hazards to the boating public. Such hazards include obstructions to the waterway that may cause marine casualties, explosive danger of fireworks, and debris falling into the water that may cause death or serious bodily harm and property damage.

Discussion of Rule

Because of the aforementioned hazards, the Captain of the Port Detroit has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Giannangeli Wedding Fireworks Display. The safety zone will encompass all waters on Lake St. Clair within a 420 foot radius of the fireworks barge launch site located off the shore of Harrison Township, MI at position 42°36′31″ N, 082°48′2″ W from 10 p.m. until 10:30 p.m. on September 24, 2011. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on

scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the launch platform will be relatively small and exist for only a minimal time. Thus, restrictions on vessel movement within any particular area of Lake St. Clair are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in this portion of Lake St. Clair between 10 p.m. through 10:30 p.m. on September 24, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities because vessels can easily transit around the zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0721 to read as follows:

§ 165.T09–0721 Safety zone; Giannangeli Wedding Fireworks, Lake St. Clair, Harrison Township, MI.

(a) *Location.* The safety zone will encompass all U. S. navigable waters on Lake St. Clair within a 420 foot radius of Harrison Township, MI at position 42°36′31″ N, 082°48′2″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 10 p.m. through 10:30 p.m. on September 24, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in Section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: September 6, 2011.

E.J. Marohn,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2011–24143 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0939]

RIN 1625–AA00

Safety Zone; M/V DAVY CROCKETT, Columbia River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is extending the enforcement period of a safety zone established on the waters of the Columbia River surrounding the remaining cofferdam at the M/V DAVY CROCKETT removal sight at approximate river mile 117. The original safety zone was established on January 28, 2011. The safety zone is necessary to help ensure the safety of the response workers and maritime public from the hazards associated with the ongoing worksite cleanup operations. All persons and vessels are prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port, Columbia River or his designated representative.

DATES: This rule is effective in the CFR from September 20, 2011 through October 31, 2011. This rule is effective with actual notice for purposes of enforcement on September 1, 2011. This rule will remain in effect through October 31, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0939 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0939 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BM1 Silvestre Suga, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, e-mail *Silvestre.G.Suga@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 to do so would be contrary to public interest. The safety zone is immediately

necessary to help ensure the safety of the response workers and the maritime public due to the ongoing worksite cleanup operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the safety zone is immediately necessary to help ensure the safety of the response workers and the maritime public due to the ongoing worksite cleanup operations.

Background and Purpose

The remaining cofferdam at the M/V DAVY CROCKETT removal sight is located on the Washington State side of the Columbia River at approximately river mile 117. The Coast Guard, other state and federal agencies, and federal contractors are continuing a worksite cleanup following the removal of M/V DAVY CROCKETT. The cleanup operations require a minimal wake in the vicinity of the cofferdam to help ensure the safety of response workers. Only authorized persons and/or vessels can be safely allowed in the worksite cleanup area.

A 300 ft safety zone is necessary to keep vessels clear of the ongoing worksite cleanup in and around the cofferdam. The previous 300 ft safety zone will expire on August 31, 2011.

Discussion of Rule

The Coast Guard is extending the enforcement of the safety zone created by this rule until October 31, 2011. The safety zone will cover all waters of the Columbia River encompassed within the following four points: Point one at 45°34′59.74″ N/122°28′35.00″ W on the Washington bank of the Columbia River then proceeding into the river to point two at 45°34′51.42″ N/122°28′35.47″ W, then proceeding upriver to the third point at 45°34′51.02″ N/122°28′07.32″ W, then proceeding to the shoreline to the fourth point on the Washington Bank at 45°34′56.06″ N/122°28′07.36″ W, then back along the shoreline to point one. Geographically this encompasses all the waters within an area starting at approximately 300 ft upriver from the cofferdam cleanup site extending to 300 ft abreast of the cofferdam cleanup site and then ending 300 ft down river of the cofferdam cleanup site.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard has made this determination based on the fact that the safety zones created by this rule will not significantly affect the maritime public because the areas covered are limited in size and/or have little commercial or recreational activity. In addition, vessels may enter the safety zones with the permission of the Captain of the Port, Columbia River or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: The owners and operators of vessels intending to operate in the areas covered by the safety zones created in this rule. The safety zones will not have a significant economic impact on a substantial number of small entities because the areas covered are limited in size. In addition, vessels may enter the safety zones with the permission of the Captain of the Port, Columbia River or his designated representative.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the creation of safety zones. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–175 to read as follows:

§ 165.T13–175 Safety Zone; M/V DAVY CROCKETT Cleanup site, Columbia River.

(a) *Location:* The following area is a safety zone:

(1) All waters of the Columbia River encompassed within the following four points: Point one at 45°34′59.74″ N/122°28′35.00″ W on the Washington bank of the Columbia River then proceeding into the river to point two at 45°34′51.42″ N/122°28′35.47″ W, then proceeding upriver to the third point at 45°34′51.02″ N/122°28′07.32″ W, then proceeding to the shoreline to the fourth point on the Washington Bank at 45°34′56.06″ N/122°28′07.36″ W, then back along the shoreline to point one. Geographically this encompasses all the waters within an area starting at approximately 300 ft upriver from the cofferdam cleanup site extending to 300 ft abreast of the cofferdam cleanup site and then ending 300 ft down river of the cofferdam cleanup site.

(2) [Reserved]

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port, Columbia River or his designated representative.

(c) *Enforcement Period.* The safety zone created in this section will be in effect from September 1, 2011 through October 31, 2011 unless cancelled sooner by the Captain of the Port, Columbia River.

Dated: August 30, 2011.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2011–24146 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0288; FRL–9468–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of Particulate Matter Emissions From the Operation of Outdoor Wood-Fired Boilers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision pertains to the control of particulate matter emissions from the operation of outdoor wood-fired boilers (OWBs). EPA is approving this revision to reduce particular matter emissions from the operation of outdoor wood-fired boilers in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on October 20, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0288. All documents in the docket are listed in the *http://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 *http://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: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2011 (76 FR 41742), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval for the control of particulate matter emissions from the operation of OWBs. The formal SIP revision was submitted by the Pennsylvania Department of the Environmental Protection (PADEP) on October 20, 2010. No public comments were received on the NPR.

II. Summary of SIP Revision

The SIP revision adds definitions and terms to Title 25 of the Pennsylvania Code (25 Pa. Code) Chapter 121.1, relating to definitions, used in the substantive provision of this SIP revision. In addition, the SIP revision adds a new regulation to 25 Pa. Code Chapter 123 (Standards for Contaminants) Particulate Matter Emissions, Section 123.14 (Outdoor Wood-Fired Boilers). The emissions standard established in this SIP revision is the Phase 2 emissions standard described in the EPA voluntary OWB program. The SIP revision is also based on the Northeast States for Coordinated Air Use Management (NESCAUM) model rule.

The new regulation (Section 123.14) applies to the following: (1) To a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an outdoor wood-fired boiler for use; (2) a person who installs an outdoor wood-fired boiler; and (3) a person who purchases, receives, leases, owns, uses or operate an outdoor wood-fired boiler. The new regulation consists of the following: (1) Exemptions for a non-Phase 2 OWB; (2) Phase 2 OWB provisions; (3) setback requirements for new Phase 2 OWBs; (4) stack height requirements for new Phase 2 OWBs; (5) allowed fuels; (6) prohibited fuels; and (7) applicable laws and regulatory requirements. Other specific requirements for the control of particulate matter emissions from the operation of OWBs and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

III. Final Action

EPA is approving 25 Pa. Code Chapter 121.1, relating to definitions used in the substantive provision of this SIP revision and the new regulation pertaining to 25 Pa. Code Chapter 123 (Standards for Contaminants) Particulate Matter Emissions, Section 123.14 (Outdoor Wood-Fired Boilers) as revisions to the Pennsylvania SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to Pennsylvania's control of particulate matter emissions from the operation of outdoor wood-fired boilers, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 31, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In §52.2020, the table in paragraph (c)(1) is amended by:
■ a. Revising entry for Section 121.1.
■ b. Adding entry for Section 123.14 after the existing entry for Section 123.13(a) through (c).

The amendments read as follows:

§52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ §52.2063 citation
Title 25—Environmental Protection Article III—Air Resources Chapter 121 General Provisions				
Section 121.1	Definitions	12/18/10	9/20/11 [Insert page number where the document begins].	Added new definitions and terms. The State effective date is 10/2/10.
*	*	*	*	*
Chapter 123—Standard for Contaminants				
*	*	*	*	*
Particulate Matter Emissions				
Section 123.14	Outdoor wood-fired boilers.	10/2/10	9/20/11 [*Insert page number where the document begins*].	New section.
*	*	*	*	*

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[FR Doc. 2011–24099 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0475; FRL- 9466–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2002 Base Year Emission Inventory, Reasonable Further Progress Plan, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Washington, DC 1997 8-Hour Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia (the States). These revisions pertain to the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Washington, DC–MD–VA moderate 1997 8-hour ozone nonattainment area (the Washington Area). EPA is also approving the 2008 transportation conformity motor vehicle emissions budgets (MVEBs) associated with this revision. EPA is approving the SIP revisions because they satisfy the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrate further progress in reducing ozone precursors. This action is being taken under the CAA.

DATES: *Effective Date:* This final rule is effective on October 20, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0475. All documents in the docket are listed in the *http://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 *http://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 District of Columbia. Department of the Environment, Air Quality Division, 1200 1st Street, NE., 5th floor, Washington, DC 20002; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 30, 2011 (76 FR 38334), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. The NPR proposed approval of the 2002 base year emissions inventory, the RFP plan, RFP contingency measure, and RACM analysis for the Washington, DC–MD–VA moderate 1997 8-hour ozone

nonattainment area. These SIP elements were part of the ''Plan to Improve Air Quality in the Washington, DC–MD–VA Region, State Implementation Plan (SIP) for 8–Hour Ozone Standard, Moderate Area SIP'' (the Washington Area 8-hour ozone plan), which the District of Columbia Department of the Environment (DDOE), the Maryland Department of the Environment (MDE), and the Virginia Department of Environmental Quality (VADEQ) developed jointly. The Washington Area 8-hour ozone plan was formally submitted to EPA as a SIP revision by DDOE on June 12, 2007, by MDE on June 4, 2007, and by VADEQ on June 12, 2007. The NPR also proposed approval of the transportation conformity 2008 MVEBs associated with this revision.

II. Summary of SIP Revision

The SIP revision addresses emissions inventory, RACM, RFP, and RFP contingency measures requirements for the 1997 8-hour ozone NAAQS for the Washington, DC–MD–VA 1997 8-hour moderate ozone nonattainment area. The SIP revision also establishes MVEBs for 2008. Other specific requirements of the Washington Area 8-hour ozone plan and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts.* * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

EPA is approving the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets for the Washington, DC–MD–VA 1997 8-hour moderate ozone nonattainment area, and the Washington Area 8-hour ozone plan, which were submitted to EPA as a SIP revision by DDOE on June 12, 2007, by MDE on June 4, 2007, and by VADEQ on June 12, 2007. The SIP revision satisfies the requirements for 1997 8-hour ozone NAAQS nonattainment areas classified as moderate and demonstrates further progress in reducing ozone precursors.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the 2002 base year emissions inventory, the 2008 ozone projected emission inventory, the 2008 RFP plan; RFP contingency measures, RACM analysis, and 2008 transportation conformity budgets for the Washington, DC–MD–VA 1997 8-hour moderate ozone nonattainment area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 31, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding at the end of the table, the entries for Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures and Contingency Measures; 2002 Base Year Inventory for VOC, NO_X and CO; and 2008 RFP Transportation Conformity Budgets for the Washington DC–MD–VA 1997 8-hour Ozone Moderate Nonattainment Area. The amendments read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2002 Base Year Inventory for VOC, NO_X, and CO.	Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2008 RFP Transportation Conformity Budgets.	Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	

■ 3. Section 52.474 is amended by revising the section heading and by adding paragraph (d) to read as follows:

§ 52.474 Base Year Emissions Inventory.

* * * * *

(d) EPA approves as a revision to the District of Columbia State Implementation Plan the 2002 base year emissions inventories for the Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area submitted by the Acting Director of the District of Columbia Department of the Environment on June 12, 2007. This submittal consists of the 2002 base year point, area, non-road mobile, and on-road mobile source inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_X).

■ 4. Section 52.476 is amended by adding paragraphs (e) and (f) to read as follows:

§ 52.476 Control strategy: ozone.

* * * * *

(e) EPA approves revisions to the District of Columbia State Implementation Plan consisting of the 2008 reasonable further progress (RFP) plan, reasonably available control measures, and contingency measures for the Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area submitted by the Acting Director of the District of Columbia Department of the Environment on June 12, 2007.

(f) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Washington, DC–MD–

VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	70.8	159.8	September 21, 2009 (74 FR 45853), published September 4, 2009.

Subpart V—Maryland

■ 5. In § 52.1070, the table in paragraph (e) is amended by adding at the end of the table, the entries for Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures and Contingency Measures; 2002 Base Year Inventory for VOC, NO_X and CO; and 2008 RFP Transportation Conformity Budgets for the Washington DC–MD–VA 1997 8-hour Ozone Moderate Nonattainment Area. The amendments read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	* *	*
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins]..	
2002 Base Year Inventory for VOC, NO_X, and CO.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2008 RFP Transportation Conformity Budgets.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	

■ 6. Section 52.1075 is amended by adding paragraph (k) to read as follows:

§ 52.1075 Base Year Emissions Inventory.

* * * * *

(k) EPA approves as a revision to the Maryland State Implementation Plan the 2002 base year emissions inventories for the Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007. This submittal consists of the 2002 base year point, area, non-road mobile, and on-road mobile source inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_X).

■ 7. Section 52.1076 is amended by adding paragraphs (u) and (v) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(u) EPA approves revisions to the Maryland State Implementation Plan consisting of the 2008 reasonable further progress (RFP) plan, reasonably available control measures, and contingency measures for the Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007.

(v) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	70.8	159.8	September 21, 2009 (74 FR 45853), published September 4, 2009.

Subpart VV—Virginia

■ 8. In § 52.2420, the table in paragraph (e) is amended by adding at the end of the table, the entries for Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures and Contingency Measures; 2002 Base Year Inventory for VOC, NO_x and CO; and 2008 RFP Transportation Conformity Budgets for the Washington DC-MD-VA 1997 8-hour Ozone Moderate Nonattainment Area. The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	* *	*
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2002 Base Year Inventory for VOC, NOx, and CO.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2008 RFP Transportation Conformity Budgets.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	

■ 9. Section 52.2425 is amended by revising the section heading and by adding paragraph (e) to read as follows:

§ 52.2425 Base Year Emissions Inventory.

* * * * *

(e) EPA approves as a revision to the Virginia State Implementation Plan the 2002 base year emissions inventories for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007. This submittal consists of the 2002 base year point, area, non-road mobile, and on-road mobile source inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_X).

■ 10. Section 52.2428 is amended by adding paragraphs (f) and (g) to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

* * * * *

(f) EPA approves revisions to the Virginia State Implementation Plan consisting of the 2008 reasonable further progress (RFP) plan, reasonably available control measures, and contingency measures for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007.

(g) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	70.8	159.8	September 21, 2009 (74 FR 45853), published September 4, 2009.

[FR Doc. 2011–23967 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0770; FRL–9466–5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Requirements for Preconstruction Review, Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. The revision establishes and requires the addition of nitrogen oxides (NO_X) as a precursor to ozone in the Delaware SIP. EPA is approving this revision to include NO_X as a precursor to ozone in the requirements for preconstruction review for prevention of significant deterioration (PSD) areas in Delaware in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on October 20, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0770. All documents in the docket are listed in the *http://www.regulations.gov* website. 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 *http://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 Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814–3376, or by e-mail at *mccauley.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On May 9, 2011 (76 FR 26679), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of NO_X as a precursor to ozone in the requirements for preconstruction review for PSD areas in Delaware. The formal SIP revision was submitted by Delaware on April 1, 2010.

This SIP revision approval will add the current regulations found in Regulation 1125, section 3.0, Requirements for Preconstruction Review, Prevention of Significant Deterioration (Regulation 1125, section 3.0) as of April 11, 2010 which established NO_X as a precursor to ozone, but will keep intact the formally approved Delaware SIP increments for NO_X found in the **Federal Register** notice for Delaware dated July 27, 1993 (58 FR 40065) for permitting and the construction of new major stationary sources and the significant modification of existing major stationary sources of air pollutants in areas designated attainment or non-classifiable for the National Ambient Air Quality Standards (NAAQS).

II. Summary of SIP Revision

As required by 40 CFR part 51, Subpart I—''Review of New Sources and Modifications,'' this rule adopts criteria and procedures for the prevention of significant deterioration of air quality that are consistent with the governing Federal regulation at 40 CFR 51.166. Promulgation of this rule by the State Legislature was necessary for the State to fulfill its responsibilities under 40 CFR part 51 and the CAA, as amended. Revisions to the State's rule were also necessary to ensure that the SIP provides for the attainment and maintenance of the NAAQS. This SIP approval action addresses changes needed in the part C PSD permit program. This SIP submission also corrects deficiencies identified by EPA in the March 27, 2008 **Federal Register** action entitled, ''Completeness Findings for section 110(a) State Implementation Plans for the 8-hour Ozone National Ambient Air Quality Standards (1997 Ozone NAAQS)'' (73 FR 16205). EPA's approval of this SIP submission addresses Delaware's compliance with the portion of CAA section 110(a)(2)(C) & (J) relating to the CAA's part C permit program for the 1997 Ozone NAAQS, because this approval action will establish NO_X as a precursor to ozone in Delaware's SIP in accordance with the **Federal Register** action dated November 29, 2005 (70 FR 71612) that finalized the NO_x as a precursor for ozone regulations set forth at 40 CFR 51.166 and in 40 CFR 52.21. As such, this approval action will add NO_x as a precursor to ozone in the Delaware SIP and Delaware will be in compliance with the portion of CAA section 110(a)(2)(C) and (J) relating to the CAA's part C permit program for the 1997 ozone NAAQS.

Other specific requirements of NO_x as a precursor to ozone and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the addition of nitrogen oxides (NO_X) as a precursor to ozone for PSD as a revision to the Delaware SIP and is making a determination that Delaware is in compliance with the portion of CAA section 110(a)(2)(C) and (J) relating to the CAA's part C permit program for the 1997 ozone NAAQS.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to add nitrogen oxides (NO_X) as a precursor to ozone into the Delaware SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 31, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entry for Regulation 1125, Section 3.0 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
1125 REQUIREMENTS FOR PRECONSTRUCTION REVIEW				
*	*	*	*	*
Section 3.0	Prevention of Significant Deterioration of Air Quality.	4/11/10	9/20/11 [Insert page number where the document begins].	Modified to include NO_X as precursor to ozone. Previous SIP-approved revisions to Section 3.1 for nitrogen dioxide increments and Section 3.9A (now designated as Section 3.10.1) for air quality models remain part of the SIP.
*	*	*	*	*

* * * * *

[FR Doc. 2011–23984 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Material Inspection and Receiving Report (DFARS Case 2009–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report, to incorporate new procedures for using the electronic Wide Area WorkFlow (WAWF) Receiving Report.

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, telephone 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** (75 FR 56961) on September 17, 2010, to amend DFARS Appendix F, Material Inspection and Receiving Report, to provide new coverage on the use, preparation, and distribution of the electronic WAWF receiving report, which is the primary method for documenting acceptance of supplies and services and for electronic invoicing. The rule also addressed WAWF capability to provide the following:

- Item Unique Identification (IUID). When the clause at DFARS 252.211–7003, Item Identification and Valuation, is used in the contract and requires reporting of IUID data, WAWF captures the IUID data and forwards the data to the IUID registry after acceptance. WAWF may be used to report Unique Item Identifiers (UIIs) at the line item level and also UIIs embedded at the line item level.
- Radio Frequency Identification (RFID). When the clause at DFARS 252.211–7006, Radio Frequency Identification, is used in the contract, WAWF will capture the RFID information and forward the data to the receiving location.

Using WAWF is the only way a contractor can comply with the clause to furnish RFID data via an Advance Shipping Notice. Insertion of the new WAWF coverage into Appendix F necessitates relocating and renumbering existing coverage for use, preparation, and distribution of the DD Form 250 Material Inspection and Receiving Report, and the DD Form 250–1 Tanker/Barge Material Inspection and Receiving Report.

II. Discussion and Analysis

In response to the proposed rule, DoD received comments from five respondents. A discussion of the comments follows.

A. Revise F–103, WAWF RR and DD Form 250

Comment: Two respondents suggested changing the text at F–103(b)(2) for the transfer of Government property using the property transfer function. Another respondent recommended adding where training for the preparation of document types is available.

Response: These recommendations are incorporated into the final rule.

B. Limitation on the Quantity of Embedded Items in WAWF

Comment: A respondent asked if there was a limit on the quantity of embedded items at the line item level that may be reported in WAWF.

Response: A quantity limit of 100 embedded items currently exists in the software capability, however, this limit

is subject to change in future versions of WAWF.

C. F–103(e)(2), Radio Frequency Identification (RFID)

Comment: A respondent suggested adding clarification on the use of RFID information.

Response: As suggested, paragraph F–103(e)(2) is revised to clarify that the RFID information can be added either at submission or via the ''WAWF Pack Later'' functionality.

D. F–104, Application

Comment: A respondent asked about the meaning of ''consigned to'' at F–104(a)(4) and for clarification regarding use of a continuation sheet. The respondent stated that they have no control over how the continuation sheet appears or prints from WAWF.

Response: The phrase ''consigned to'' is the one to whom a line item is given, transferred, or delivered for control. In regard to use of a continuation sheet, the format printed out from WAWF will suffice as long as the required contractor information is entered.

E. F–301, Preparation Instructions—General Comments

Comment: Two respondents suggested, at paragraph F–301(a)(1), replacing ''contractor'' with ''vendor'' to be consistent with the label used on the training Web site provided in the proposed rule. A respondent suggested: (1) Revising F–301(a)(2) to reflect the creation of an extension to the prime Commercial and Government Entity (CAGE); (2) replacing, at paragraph F–301(a)(4), ''official DoD sites'' with ''DoD definitive sources''; (3). adding text at paragraph F–301(b)(1)(iii) to clarify that comments in the miscellaneous information tab will appear in the comments section of the printed WAWF receiving report; (4). changing, at paragraph F–301(b)(1)(iv), ''DoD contract number'' to ''DoD contract number and delivery order number''; and, (5) updating paragraph F–301(b)(3) to correctly refer to the data field as ''Estimated'' and reflect that data entry is a drop-down box.

Response: The final rule is revised to incorporate these recommendations.

F. Inclusion of Shipping Documents

Comment: A respondent requested at paragraph F–301(b)(2)(i), SHIPMENT NO., that contractors must always provide packaging documentation in their shipment containers. If contractors choose to provide their own packaging documentation they must ensure their documentation includes their shipment number data. The respondent recommended the addition of a statement that any document utilized as a packing list must include the shipment number information. Additionally, the respondent suggested revising the text with an example to clarify that the shipment number format requires first three data positions to be alpha, fourth position alpha-numeric and last three positions are numeric *e.g.,* DFAR001 or DAR0001.

Response: The recommendations are incorporated into the final rule.

Comment: A respondent requested at paragraph F–301(b)(3), Date Shipped, that a ''MIRR clause does not identify electronic data submission timeline.'' The respondent recommended the DFARS MIRR language include the statement that the contractor will submit the completed MIRR via WAWF within one business day of material shipment. The respondent stated that material shipments missing shipment numbered data causes manual research in order to process the receipt acceptance.

Response: The MIRR is completed at the time of delivery of goods or services and, for both WAWF and paper DD form 250s, copies of the MIRR accompany the shipment. Paragraph F–301(b)(3) is revised to add a reference to ''see F–303).''

Comment: A respondent requested at paragraph F–305, Invoice instructions, adding a statement that contractors should ensure the packaging documentation includes a Government signed receiving report when the contract requires origin inspection and acceptance. The respondent further stated that contractors must include the signed document indicating material receipt acceptance has occurred in the container with the exception of material shipments that are approved for Alternate Release Procedures.

Response: The final rule is revised to incorporate the recommendations.

G. F–301(b)(4)—Bill of Lading Information

Comment: A respondent stated, at paragraph F–301(b)(4)(i), that bills of lading are obtained when an item is being scheduled to ship, and thus may not be available until after the item has been source inspected/accepted. The respondent recommended clearly stating that the field is not required prior to source inspection and acceptance, nor, in their opinion, should a receiving report correction be issued only for adding a bill of lading after it has been obtained. Further, the respondent suggested revising F–301(b)(4), to enter the commercial or Government bill of lading number after ''BL.''

Response: Currently, the ''Bill of Lading Number'' field is not a mandatory field in WAWF. Additional changes to the Bill of Lading functionality may be made later on.

H. Line Haul Information Changes

Comment: One respondent suggested at paragraph F–301(b)(5), Line Haul Mode, that this is an item that may not be stated accurately until after signature, when the item is scheduled for shipment, and recommended that this field not be required prior to source inspection/acceptance.

Response: There is flexibility in WAWF regarding this entry as ''Line Haul Mode'' field is not a mandatory field.

I. Allow for WAWF Acceptance at ''Other'' Using Code ''D''

Comment: Two respondents suggested that paragraph F–301(b)(6), Inspection and Acceptance Point, be changed from ''WAWF allows acceptance at Other'' to ''WAWF allows acceptance at Other (O).'' Two respondents suggested adding, that for purposes of conforming to contract, ''0'' is equivalent to ''D''.

Response: The final rule is revised to incorporate the recommendations.

J. Marked for Codes

Comment: A respondent suggested at paragraphs F–301(b)(7), Prime Contractor/Code, F–301(b)(9), Shipped From/Code, and F–301(b)(11), Payment Will Be Made By/Code, that these codes must match the contract, however, the street address is not required to match the contract. The respondents further opined that WAWF does not require the entry of an address code in either WAWF 4.2 or 5.0, and concluded that the requirement of an address should be clarified.

Response: No clarification is needed in the rule. Contractors can fulfill contracts with shipments from their location or from subsidiaries or subcontractors. Therefore, the shipped from code doesn't necessarily need to match the contract. Further, the receiving report is used for services as well as supplies where there will be no ship-from code.

Comment: One respondent requested clarification at paragraph F–301(b)(13), Marked For/Code, concerning the ''Marked For Address.'' Previously, textual marking information associated with the ''Marked For DoDAAC'' was placed in the address lines of the ''Marked For DoDAAC.'' Now that DoD is moving away from paper documents, the respondent wanted confirmation to

use the data fields as labeled using the code area for the ''Marked For DoDAAC'' and address only, and the ''Mark For Rep'' and ''Mark For Secondary'' fields used for the text information.

Response: The respondent is correct concerning use of these fields. No change to the rule is required.

K. Marked for Codes

Comment: A respondent requested revisions at paragraph F–301(b)(13) to reflect that a ''Marked For Code'' cannot be a CAGE code, only a DoDAAC or Military Assistance Program Address Codes.

Response: No revision is required in response to this comment since a CAGE code can be entered in the ''Mark For Code'' field.

L. National Stock Number Entry Requirements

Comment: A respondent recommended at paragraph F–301(b)(15)(1)(A) clarifying that in the ''Type'' drop-down field, that the user is to select the corresponding type for the data entered, and that if no National Stock Number or other valid ''Type'' is available, the word ''None'' may be entered for the Stock/Part Number, with a corresponding ''Type'' of any value other than the National Stock Number selected from the drop-down box. Another respondent stated that if the contract contains NSNs as well as other identification (*e.g.,* part numbers), a contractor should place the NSN information in the Stock Part Number field and the remaining numbers in the line item description field.

Response: The paragraph is revised accordingly to incorporate the first recommendation. In regards to the second comment concerning NSNs as well as other identifying information, the respondent is correct in how this process works. The text is revised to ensure this meaning is understood.

M. The ''Description'' Field Length and Use

Comment: A respondent asked whether or not at paragraph F–301(b)(15)(ii), if exceeding 20 characters in the description field is a cause for the rejection of a receiving report. Further, the respondent requested clarification on whether or not the description refers to what is defined in the payment system as a ''service'' line item as opposed to a ''supply'' line item. A WAWF RR for a repair is for acceptance of the repair and not of the item repaired. However, repair line items are frequently defined as ''supply'' line items and therefore the ship-to location is the actual ship-to of the repaired item.

Response: Exceeding 20 characters in the description is not a cause for rejection of a receiving report. In response to the second comment, the respondent is correct that the description refers to the designation in the payment system as a ''service'' line item as opposed to a ''supply'' line item.

N. GFP Drop-Down Box

Comment: A respondent suggested that clarification at paragraph F–301(b)(15)(iv)(E) is required for how the text relates to the GFE drop-down box, and whether or not the drop-down box is insufficient for this situation. The correct use of GFE drop-down box needs to be fully explained. If it is not the same as the entry of ''GFP'' in the description text, the differences must be clarified.

Response: The drop-down GFE box is not related to this section. It is obsolete and no longer used and will be deleted in a future version of WAWF. The GFP drop-down box is sufficient for use of GFP.

O. F–301—General Comments Regarding Unit Price

Comment: Two respondents stated that at paragraph F–301(b)(18), the proposed text is identical to that used in the current Appendix F for unit price (see F–301, block 19, on current Appendix F). They further stated that this document will never be used as an invoice; thus, in their opinion, there should not be a requirement to fill in a unit price, except in the cases listed. Further, one respondent recommended at paragraph F–301(b)(18)(i) the addition of the text to clarify the handling of unit prices and property transfer. Another respondent had a concern with unit prices that were as little as twenty cents and not being accepted by the Government agency. This respondent also noted that an estimated price can be entered in the description field, but the Government contracting office expects the price entered in the price field, even though WAWF does not accept the entry the way the agency had requested. The respondent went on to state that the DFARS does not address the electronic aspect of WAWF and billing.

Response: The unit price is required. In regard to the intent of the paragraph on the WAWF initiated property transfer, the purpose is to alert the contractor that a property transfer will be generated as a result of the completion of the WAWF RR. In regard to the unit price, it is required when the clause at DFARS 252.211–7003, Item Identification and Valuation, is used; otherwise the use of the field is optional and at the discretion of the vendor. When used for item unique identification, the unit price does not necessarily reflect the billing price on the contract. The DFARS addresses electronic billing at 252.232.7003, Electronic Submission of Payment Requests and Receiving Reports. No change in the rule is required in response to these comments.

P. F–301—General Comments Regarding Contract Quality Assurance

Comment: One respondent suggested at paragraph F–301(b)(20)(ii), that the term ''execute'' is misleading and will cause confusion. The respondent also stated that removing the quotation marks will ensure a clear direction. The respondent further suggested at paragraphs F–301(b)(20)(iv)(A)(3) and (v) the steps described should match the actual step taken in WAWF to electronically sign the document and recommended the text be revised.

Response: The quotation marks used for the term ''execute'' are removed. In regard to the electronic signatures, the text has been revised accordingly to match the actual steps taken in WAWF.

Q. Comment Regarding F–301(b)(21)

Comment: One respondent suggested paragraph F–301(b)(21) should be referenced as the COMMENTS block and/or MISC INFO tab.

Response: The title is revised to incorporate ''MISC. INFO'' as suggested.

R. Printed Documents

Comment: One respondent recommended at paragraph F–306(b), that the text be revised to clarify that if a signed copy is required by the contractor, the contractor will print the WAWF RR only after a signature is applied by the Government Inspector or Acceptor in WAWF.

Response: This text is revised accordingly to incorporate the suggestion.

S. Part 4—General Comments

Comment: One respondent stated that in Part 4 there are multiple references to section F–301 and recommended, where appropriate, the references be updated to the corresponding F–401 reference. The respondent also suggested that at paragraph F–401(b)(2), ''Starting over with 0001'' cannot be used in an electronic world, and that the DD Form 250 needs to conform to the same requirement (F–301(b)(2)) as the WAWF RR.

Response: Part 4 references in the final rule are updated as required. In

regard to shipment numbering, the system will not allow the shipment number to start over with 0001 as any duplication of the combined contract number, delivery order number, and shipment number results a duplication error. In these cases, WAWF requires a change in the shipment number prefix. While on a paper DD Form 250, it is possible to start over with 0001 when the series is completely used, a change in the shipment number prefix should be required for consistency. The text at F–401(b)(2) is revised to clarify this process.

T. Part 5 Comments

Comment: A respondent commented on Part 5 concerning the ''alternate'' release procedure. The respondent noted that all other references in the document are to ''alternative'' release procedure, and would like to know which is correct.

Response: The final rule is revised in Part 5 to refer to ''alternative'' in lieu of ''alternate.''

U. WAWF Versions

Comment: A respondent stated there are a number of changes incorporated in the latest WAWF release that impact MIRR data entry. The respondent noted that changes include removal of ''other'' as an acceptance point and replacing it with more specific data entries for inspection, acceptance, and ship to DoDAAC codes.

Response: There is no need to change paragraph F–301(b)(6) as ''Other'' will remain an option for the inspection and acceptance point. DoD adopted business rules regarding the inspection, acceptance, and ship-to fields but kept the source, destination, and other inspection and acceptance points. Therefore, no change is necessary.

V. General Comments

Comment: One respondent stated that Appendix F addresses the use of the MIRR in WAWF, yet multiple types of receiving and performance transactions exist. Examples include:

- Receiving Report.
- Receiving Report—COMBO.
- Invoice 2-in-1 (Services Only).

Response: Appendix F only provides instruction for use of the MIRR. Invoice 2-in-1 (services only) is used to document acceptance of services when a MIRR is not required. The COMBO transaction in WAWF allows for the vendor to do one set of data entry that is split in the system into both a receiving report, identical to the non-COMBO receiving report, and an invoice. The instructions for the data entry in the COMBO are the same as the data fields for the receiving report.

Comment: A respondent suggested at paragraph F–301 rewording to state that Electronic Document Access (EDA) will automatically populate all available and applicable contract data.

Response: This change is incorporated at F–301(a)(3) in the final rule.

Comment: A respondent stated that they had received multiple rejections of receiving reports due to a formatting issue. In one case, the receiving report was rejected due to a dash being dropped out of the line item stock number upon loading to WAWF. In the respondent's opinion, the missing dash should not be a reason for rejection. The respondent requested adding specific language to F–301(b)(15) to indicate that missing dashes are acceptable in the line item stock number.

Response: The respondent indicates a dash was missing from the part number. This changes the item identification significantly. There are no known concerns with the National Stock Number functionality.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The final rule provides guidance on the preparation and use of the electronic WAWF Receiving Report which is now required for use in most contracts. Additionally, the rule addresses the WAWF capability and instructions to comply with reporting requirements for IUID and RFID data submissions. DoD has prepared a Final Regulatory Flexibility Analysis, which is summarized as follows:

The objective of the rule is to facilitate maximum use of WAWF by providing detailed guidance. DFARS Subpart 232.70, Electronic Submission and Processing of Payment Requests and Receiving Reports, prescribes policies for submitting and processing payment requests in electronic form to comply with 10 U.S.C. 2227, Electronic Submission and Processing of Claims for Contract Payments. WAWF is the DoD system for contractors to submit payment and receiving reports in an electronic format. This final rule affects all DoD contractors who are not exempt from using WAWF. Exempt classes of contracts are those that are listed under the seven categories of contracts at DFARS 232.7002, Policy. Record keeping required is limited to that necessary to properly invoice and record shipping and receiving information under Government contracts. The preparation of these records requires clerical and analytic skills to create the documents and input them into the electronic WAWF system.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule that would meet the requirements of 10 U.S.C. 2227, Electronic Submission and Processing of Claims for Contract Payments. Any impact on small business is expected to be beneficial by providing detailed use, preparation and distribution guidance for electronic submission in lieu of preparing and submitting paper invoices and receiving records.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The Appendix F information collection requirements in this rule are approved under Office of Management and Budget Control Number 0704–0248, DFARS Appendix F, Material Inspection and Receiving Report. The current approval took into consideration use of the automated WAWF system, so inclusion of the WAWF guidance into Appendix F adds no new information collection requirements.

List of Subjects in 48 CFR Appendix F to Chapter 2

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR chapter 2 is amended by revising appendix F to read as follows:

Appendix F to Chapter 2—Material Inspection and Receiving Report

Sec.

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

Part 1—Introduction

F–101 General.

(a) This appendix contains procedures and instructions for the use, preparation, and distribution of the Wide Area WorkFlow Receiving Report (WAWF RR), the DD Form 250, Material Inspection and Receiving Report (MIRR) and (DD Form 250 series equivalents) and commercial shipping/packing lists used to document Government contract quality assurance.

(b) The use of the DD Form 250 is on an exception basis (see DFARS 232.7003(a)) because use of the WAWF RR is now required by most DoD contracts. WAWF provides for electronic preparation and documentation of acceptance of supplies and services, and electronic invoicing. In addition WAWF allows the printing of a RR that can be used as a packing list or when a signed copy is required.

F–102 Applicability.

(a) DFARS 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports, requires payment requests and receiving reports using WAWF in nearly all cases.

(b) The provisions of this appendix also apply to supplies or services acquired by DoD when the clause at DFARS 252.246–7000, Material Inspection and Receiving Report, is included in the contract.

(c) When DoD provides quality assurance or acceptance services for non-DoD activities, prepare a MIRR using the instructions in this appendix, unless otherwise specified in the contract.

F–103 Use.

(a) The WAWF RR and the DD Form 250 are multipurpose reports used—

(1) To provide evidence of Government contract quality assurance at origin or destination;

(2) To provide evidence of acceptance at origin, destination, or other;

(3) For packing lists;

(4) For receiving;

(5) For shipping;

(6) As a contractor invoice (the WAWF RR or DD Form 250 alone cannot be used as an invoice, however the option exists to create an invoice from the Receiving Report or a Combo (Invoice and Receiving Report) both of which minimize data entry); and

(7) As commercial invoice support.

(b) Do not use the WAWF RR or the DD Form 250 for shipments—

(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory. The WAWF Property Transfer document should be used for this type of shipment. Training for the preparation of this document type is available at *https://wawftraining.eb.mil*, under the Property Transfer and Receipt section.

(c) The contractor prepares the WAWF RR or the DD Form 250, except for entries that an authorized Government representative is required to complete. When using a paper DD Form 250, the contractor shall furnish sufficient copies of the completed form, as directed by the Government representative.

(d) Use the DD Form 250–1:

(1) For bulk movements of petroleum products by tanker or barge to cover—

(i) Origin or destination acceptance of cargo; or

(ii) Shipment or receipt of Government owned products.

(2) To send quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. Annotate the forms with the words ''INSPECTED FOR QUALITY ONLY.''

(e) In addition to the above uses, the WAWF RR provides additional functionality, not provided by the paper DD Form 250 that complies with the following requirements:

(1) Item Unique Identification (IUID), when the clause at DFARS 252.211–7003, Item Identification and Valuation, is used in the contract, reporting of IUID data is required. WAWF captures the IUID data and forwards the data to the IUID registry after acceptance. WAWF can be used to report Unique Item Identifiers (UIIs) at the line item level and also UIIs embedded at the line item level.

(2) Radio Frequency Identification (RFID), when the clause at DFARS 252.211–7006, Radio Frequency Identification, is used in the contract, WAWF will capture the RFID information and forward the data to the receiving location. Using WAWF is the only way a contractor can comply with the clause to furnish RFID data via an Advance Shipping Notice (ASN). The RFID information may be added at time of submission, or via the WAWF Pack Later functionality after acceptance.

F–104 Application.

(a) *WAWF RR and DD Form 250.*

(1) Use the WAWF RR or DD Form 250 for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the WAWF RR or DD Form 250 for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, which indicate no DD Form 250 is required.

(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one WAWF RR or DD Form 250 to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate WAWF RR or DD Form 250 for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one Federal supply class (FSC) or material management code (MMC), prepare a separate WAWF RR or DD Form 250 for items of each of the FSCs or MMCs in the shipment. However, the cognizant Government representative may authorize a single WAWF RR or DD Form 250, listing each of the FSCs or MMCs included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) *Consolidation of Petroleum Shipments on a Single WAWF RR or DD Form 250.*

(i) *Contiguous United States.* Contractors may consolidate multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, on one WAWF RR or DD Form 250. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Include a shipping document (commercial or Government) with each individual load showing as a minimum—

(A) The shipper;

(B) Shipping point;

(C) Consignee;

(D) Contract and line item number;

(E) Product identification;

(F) Gross gallons (bulk only);

(G) Loading temperature (bulk only);

(H) American Petroleum Institute gravity (bulk only);

(I) Identification of carrier's equipment;
(J) Serial number of all seals applied; and
(K) Signature of supplier's representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference F–401, Table 1) before signing Block 21b.

(ii) *Overseas.* The same criteria as for contiguous United States applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each WAWF RR or DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) *Consolidation of Coal Shipments on a Single WAWF RR or DD 250.* Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one WAWF RR or DD 250. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;
(ii) The name or names;
(iii) Location and shipping point of the mine or mines from which the coal originates;
(iv) The contract number;
(v) The exact size of the coal shipped; and
(vi) A certified weighmaster's certification of weight for the truckload.

Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) *DD Form 250–1.*

(1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

Part 2—Contract Quality Assurance on Shipments Between Contractors

F–201 Procedures

Follow the procedures at PGI F–201 for evidence of required Government contract quality assurance at a subcontractor's facility.

Part 3—Preparation of the Wide Area Workflow Receiving Report (WAWF RR)

F–301 Preparation instructions.

(a) *General.*

(1) Preparation instructions and training for the WAWF RR are available at *https://wawftraining.eb.mil.* The instructions on preparing a WAWF RR are part of the Vendor Training section.

(2) Prime contractors can direct subcontractors to prepare and submit documents in WAWF by giving their subcontractors access to WAWF via the creation of a Commercial and Government Entity (CAGE) extension to the prime CAGE.

(3) If the contract is in Electronic Document Access (EDA) (DoD's contract repository), then the WAWF system will automatically populate all available and applicable contract data.

(i) When source acceptance is required, WAWF will populate the ''Inspect By'' with the ''Admin by'' Department of Defense Activity Address Code (DoDAAC). The vendor shall change the DoDAAC if Government Source Inspection (GSI) is performed at other than the ''Admin By.''

(ii) Any fields that have been pre-filled may be changed.

(iii) WAWF will also verify that CAGE codes are valid and active in the CCR (Central Contractor Registration), and that DoDAACs and Military Assistance Program Address Codes (MAPACs) are valid in Defense Automatic Addressing System (DAAS).

(4) WAWF will populate the address information for CAGE codes, DODAACs, and MAPACs from CCR and DAAS. These sites are the DoD definitive sources for address information. Any fields that have been pre-filled may be changed or additional information added.

(5) Do not include classified information in WAWF.

(b) *Completion instructions.*

(1) Contract no/delivery order No.

(i) Enter the 13-position alpha-numeric basic Procurement Instrument Identification Number (PIIN) of the contract. When applicable, enter the four-position alpha-numeric call/order serial number that is supplementary to the 13-position basic PIIN. This number is also referred to as the Supplementary Procurement Instrument Identification Number (SPIIN). Use SPIINs for (also see Subpart 204.70)—

(A) Delivery orders under indefinite-delivery type contracts;

(B) Orders under basic ordering agreements; and

(C) Calls under blanket purchase agreements.

(ii) Except as indicated in paragraph (b)(1)(iii) of this appendix, do not enter supplementary numbers used in conjunction with basic PIINs to identify—

(A) Modifications of contracts and agreements;

(B) Modifications to calls or orders; or

(C) Document numbers representing contracts written between contractors.

(iii) When shipping instructions are furnished and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation/Modification of Contract), enter a comment in the Misc. Info Tab to this effect. This will appear in the Comments section of the printed WAWF RR.

(iv) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number in the contract number field and enter the DoD contract number and, when applicable, delivery order number in the delivery order field.

(2) Shipment No.

(i) The shipment number format requires first three data positions to be alpha, fourth position alpha-numeric and last three positions numeric, *e.g.,* DFAR001 or DAR0001. Any document used as a packing list must include the shipment number information.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each ''Shipped From'' address. The shipment number prefix shall be different for each ''Shipped From'' address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one ''Shipped From'' address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number from each ''Shipped From'' address, or shipping location within the ''Shipped From'' address. Consecutively number all subsequent shipments with the identical shipment number prefix. While shipments should be created sequentially they can be released and accepted out of sequence.

(1) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three-position numeric serial number. Use the following alpha-numeric sequence:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

(2) When this series is completely used, the shipment number prefix will have to be changed when the series is completely used. WAWF will not allow duplicate shipment numbers to be created against a contract or contract and delivery order.

(ii) Reassign the shipment number of the initial shipment where a ''Replacement Shipment'' is involved (see paragraph (b)(16)(iv)(F) of this appendix).

(iii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a ''Z.'' Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to end that shipment number with a ''Z''; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see F–304) covering the final shipment made from the prime contractor's plant by addition of a ''Z'' to that shipment number.

(iv) Contractors follow the procedures in F–305 to use commercial invoices.

(3) Date shipped. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of contract quality assurance and/or acceptance, enter the estimated date of release. When the date is estimated, enter an ''E'' or select an ''E'' from the drop down menu in the ''Estimated'' block after the date. Do not delay submission of the WAWF RR for lack of entry of the actual shipping date. Correction of the WAWF RR is not required to show the actual shipping date (see F–303). Once the document is submitted the shipment date cannot be changed.

(4) B/L TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after ''B/L;'' WAWF provides the capability to separately and correctly identify the Government Bill of Lading (GBL) from a Commercial Bill of Lading (CBL). An authorized user will select whether the entered bill of lading number is either a GBL number or a CBL number.

(ii) The transportation control number must be a 17 alpha/numeric digit min/max field, and WAWF provides the capability to enter two secondary transportation tracking numbers.

(5) Line haul mode. Select the Line Haul Mode of Shipment code from a drop down menu in WAWF.

(6) Inspection and acceptance point. Enter an ''S'' for Origin or ''D'' for Destination. In addition to ''S'' and ''D,'' WAWF allows acceptance at Other (O). For purposes of conforming to contract, ''O'' is equivalent to ''D''. In WAWF, destination acceptance is performed by the ''Ship to'' DODAAC organization and ''Other'' permits the acceptance of destination documents at a location other than the ''Ship to.'' The goods or services will be shipped to one location and the paperwork will be routed to another location for the actual acceptance.

(7) Prime contractor/code. Enter the prime CAGE code to which the contract was awarded.

(8) Administered by/code. Enter the DoDAAC code of the contract administration office cited in the contract.

(9) Shipped from/code.

(i) Enter the CAGE or DoDAAC code of the ''Shipped From'' location. If it is the same as the CAGE code leave blank.

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code of the location at which the services were performed. As mentioned in (i) above, if identical to the prime CAGE code leave blank.

(10) FOB. Enter an ''S'' for Origin or ''D'' for Destination as specified in the contract. Enter an alphabetic ''O'' if the ''FOB'' point cited in the contract is other than origin or destination.

(11) Payment will be made by/code. Enter the DoDAAC code of the payment office cited in the contract.

(12) Shipped to/code. Enter the DoDAAC, MAPAC, or CAGE code from the contract or shipping instructions.

(13) Marked for/code. Enter the code from the contract or shipping instructions. Only valid DoDAACs, MAPACs, or CAGE codes can be entered. Vendors should use the WAWF ''Mark for Rep'' and ''Mark for Secondary'' fields for textual marking information specified in the contract.

(14) Item No. Enter the item number used in the contract. Use a valid 4 or 6 character line item number under the Uniform Contract Line Item Numbering System (see 204.71). Line item numbers with 6 characters with numbers in the final two positions are not deliverable or billable.

(15) Stock/part number/description.

(i) Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. If the contract contains NSNs as well as other identification (*e.g.,* part numbers) the contractor should place the NSN information in the Stock Part Number field and the remaining numbers in the line item description field. The data entered in the NSN field must reflect the NSN of the material item being shipped and should be a valid NSN, 13 positions in length. In the ''Type'' drop-down field, select the corresponding type for the data entered. If no National Stock Number (NSN) or other valid ''Type'' is available, the word ''NONE'' may be entered for the Stock/Part Number, with a corresponding ''Type'' of any value other than NSN selected from the drop-down box.

(B) In the description field, if required by the contract for control purposes, enter: The make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) The Military Standard Requisitioning and Issue Procedures (MILSTRIP) must be placed on the MILSTRIP Tab, not in the line item description field. Enter the MILSTRIP data for each CLIN when MILSTRIP data is identified in the contract.

(ii) For service line items, select SV for ''SERVICE'' in the type field followed by as short a description as is possible in the description field. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. The ''Ship To'' code and the ''Unit'' will have to be filled out. The ''Shipped To'' code is the destination Service Acceptor Code for WAWF. If source inspected and accepted enter the service performance location as the ''Ship To'' code.

(iii) For all contracts administered by the Defense Contract Management Agency, with the exception of fast pay procedures, enter the gross weight of the shipment.

(iv) In the description field enter the following as appropriate (entries may be extended through Block 20).

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (*e.g.,* 17X4911–14003–104).

(C) When the Navy transaction type code (TC), ''2T'' or ''7T'' is included in the appropriation data, enter ''TC 2T'' or ''TC 7T.''

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters ''GFP.''

(F) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, *e.g.,* ''AERNO 60–6354.''

(G) For items shipped with missing components, enter and complete the following:

''Item(s) shipped short of the following component(s): NSN or comparable identification _____, Quantity _____, Estimated Value _____, Authority _____''

(H) When shipment is made of components which were short on a prior shipment, enter and complete the following:

''These components were listed as shortages on shipment number _____, date shipped _____''

(I) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

''Return to _____, Quantity _____, Item _____, Ownership (Government/contractor).''

(J) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(K) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(L) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

''Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results.''

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(M) For clothing and textile contracts containing a bailment clause, enter the words ''GFP UNIT VALUE.''

(N) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. _____, Contract Modification No. _____, dated _____

(16) Quantity shipped/received.

(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for

purposes other than payment, enter the appropriate quantity in the description field.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall choose the Ship Advice Code ''Z''. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect to direct the subcontractor making the final shipment to choose the Ship Advice Code ''Z'';

(iii) When the Government is performing destination acceptance the acceptor should enter actual quantity received in apparent good condition in the ''Qty. Accepted'' field of the Acceptor Line Item Tab.

(17) Unit of measure. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure in the description field. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage and in the WAWF Unit of Measure Table Link. For example, LB for pound, SH for sheet.

(18) Unit price. The contractor may, at its option, enter unit prices on all WAWF RR copies, except as a minimum:

(i) The contractor shall enter unit prices for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter ''Estimated Unit Price'' in the description field. However, if the contract has Item Unique Identification (IUID) requirements and the receiving report is being processed in WAWF the unit price represents the acquisition cost that will be passed to the IUID registry. Therefore, the unit price is required (see the clause at DFARS 252.211–7003, Item Identification and Valuation). When delivering GFP via WAWF to another contractor, WAWF will initiate a property transfer if the vendor who is initiating the WAWF RR is also registered as a vendor property shipper in WAWF and the vendor receiving the property is also a vendor property receiver in WAWF.

(ii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value as ''GFP UNIT VALUE'' in the description field.

(19) Amount. WAWF will calculate and populate the amount by multiplying the unit price times the quantity.

(20) Contract Quality Assurance (CQA).

(i) The words ''conform to contract'' contained in the text above the signature block in the WAWF RR Header Tab relate to quality and to the quantity of the items on the report. Enter notes taking exception in Misc. Info Tab comment field or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under an alternative release procedure, contractors will execute the alternative release procedure in WAWF by including the appropriate indicator in the electronic transaction rather than through inclusion or attachment of the text of the certificate. The alternative release procedure only provides for release of shipment; Government acceptance must still be indicated by a Government official's signature on the WAWF RR.

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, contractors will execute Certificates in WAWF by including the appropriate indicator in the electronic transaction rather than through inclusion or attachment of the text of the certificate. Government acceptance must still be indicated by a Government official's signature on the WAWF RR.

(iv) Origin.

(A) The authorized Government representative must:—

(1) Place an ''X'' in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance; and

(2) Sign and date.

WAWF will enter the typed, stamped, or printed name, title, email address, and commercial telephone number.

(B) When fast pay procedures apply, the contractor or subcontractor shall select ''FAST PAY'' when creating the WAWF RR. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(v) Destination. When CQA and acceptance or acceptance is at destination, the authorized Government representative must—

(A) Place an ''X'' in the appropriate box(es); and

(B) Sign and date.

WAWF will enter the typed, stamped, or printed name, title, email address, and commercial telephone number.

(21) Contractor use only. MISC. INFO. Self explanatory.

F–302 Mode/method of shipment codes.

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Air Mobility Command (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload.[1]
L	Rail, less than carload.[1]
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).
R	European Distribution System or Pacific Distribution System.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Military Intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll-on Roll-off (RORO) service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by Government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes trailer/container-on-flat-car (excluding SEAVAN).

F–303 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the WAWF RR at the time of CQA or acceptance prior to the time of actual shipment.

F–304 Correction instructions.

Functionality for correcting a WAWF RR is being developed. Preparation instructions and training for corrections will be available at *https://wawftraining.eb.mil* once the functionality is deployed. The instructions will be part of the vendor training.

F–305 Invoice instructions.

Contractors shall submit payment requests and receiving reports in electronic form, unless an exception in DFARS 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the WAWF electronic form (see paragraph (b) of the clause at DFARS 252.232–7003) fulfills the requirement for a DD Form 250 MIRR. Contractors should ensure the packaging documentation includes a Government signed receiving report when the contract requires origin inspection and acceptance. Contractors must include a signed document indicating material receipt and acceptance has occurred in the container with the exception of material shipments that are approved for Alternative Release Procedures (ARP).

F–306 Packing list instructions.

Contractors may also use a WAWF processed RR as a packing list. WAWF provides options to print the RR. These printed RRs may also be used if a signed copy is required.

(a) WAWF provides a print capability for its RR. The WAWF printed RR can be identified by its distinctive format and by the text ''Please look in WAWF for signed copy'' underneath the ''RECEIVING REPORT'' title at the top of each printed page. This printed copy can be used as a packing list. If needed, the signature can be verified by reviewing the signed RR in WAWF.

(b) Contractors can also print a RR from their systems (not WAWF). If such a signed copy is required by the contractor, the contractor will print the WAWF RR only after a signature is applied by the Government Inspector or Acceptor in WAWF. Copies printed will be annotated with ''\\original signed in WAWF\\'' in lieu of the inspector/acceptor's signature.

F–307 Receiving instructions.

If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see F–301(b)(20)(v) for instructions.

Part 4—Preparation of the DD Form 250 and DD Form 250C

F–401 Preparation instructions.

(a) *General.*

(1) Dates must use nine spaces consisting of the four digits of the year, three-position alphabetic month abbreviation, and two digits for the day. For example, 2000AUG07, 2000SEP24.

(2) Addresses must consist of the name, street address/P.O. box, city, state, and ZIP code.

(3) Enter to the right of and on the same line as the word ''Code'' in Blocks 9 through 12 and in Block 14—

(i) The Commercial and Government Entity Handbook (H4/H8) code;

(ii) The DoD activity address code (DoDAAC) as it appears in the DoD Activity Address Directory (DoDAAD), DoD 4000.25–6–M; or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

(4) Enter the DoDAAC, CAGE (H4/H8), or MAPAD code in Block 13.

(5) The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(6) Enter overflow data from the DD Form 250 in Block 16 or in the body of the DD Form 250c with an appropriate cross-reference. Do not number or distribute additional DD Form 250c sheets, solely for continuation of Block 23 data as part of the MIRR.

(7) Do not include classified information in the MIRR. MIRRs must not be classified.

(b) *Completion instructions.*

(1) Block 1—Procurement instrument identification (Contract) NO. See paragraph F–301(b)(1).

(2) Block 2—Shipment no. See F–301(b)(2), Shipment no. When the series is completely used, change the shipment number prefix and start with 0001.

(3) Block 3—Date shipped. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an ''E'' after the date. Do not delay distribution of the MIRR for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date (see F–403).

(4) Block 4—B/L TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after ''B/L;''

(ii) The transportation control number after ''TCN'' (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert ''See Block 16''); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see F–402).

(5) Block 5—Discount terms.

(i) The contractor may enter the discount in terms of percentages on all copies of the MIRR.

(ii) Use the procedures in F–406 when the MIRR is used as an invoice.

(6) Block 6—Invoice no./date.

(i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an ''E'' after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in F–406 when the MIRR is used as an invoice.

(7) Block 7—Page/of. Consecutively number the pages of the MIRR. On each page enter the total number of pages of the MIRR.

(8) Block 8—Acceptance point. Enter an ''S'' for Origin or ''D'' for destination.

(9) Block 9—Prime contractor/code. Enter the code and address.

(10) Block 10—Administered by/code. Enter the code and address of the contract administration office cited in the contract.

(11) Block 11—Shipped from/code/fob.

(i) Enter the code and address of the ''Shipped From'' location. If identical to Block 9, enter ''See Block 9.''

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter ''See Block 9.''

(iii) Enter on the same line and to the right of ''FOB'' an ''S'' for Origin or ''D'' for Destination as specified in the contract. Enter an alphabetic ''O'' if the ''FOB'' point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter ''DISCOUNT EXPEDITE'' in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

(12) Block 12—Payment will be made by/code. Enter the code and address of the payment office cited in the contract.

(13) Block 13—Shipped to/code. Enter the code and address from the contract or shipping instructions.

(14) Block 14—Marked for/code. Enter the code and address from the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by ''Proj''; do not enter in the Code block.

(15) Block 15—Item No. See paragraph F–301(b)(14) with the exception to F301(b)(2)(B)2 that line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16—Stock/part No./description.

(i) Use single or double spacing between line items when there are less than four line items. Use double spacing when there are four or more line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer's name or Federal supply code (as published in Cataloging Handbook H4–1), and the part number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The contractor may use the following technique in the case of equal kind supply items. The first entry shall be the description without regard to kind. For example, ''Shoe-Low Quarter-Black,'' ''Resistor,'' ''Vacuum Tube,'' etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: The make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) On the next printing lines enter—

(1) The MIPR number prefixed by ''MIPR'' or the MILSTRIP requisition number(s) when provided in the contract; or

(2) Shipping instructions followed on the same line (when more than one requisition is entered) by the unit for payment and the quantity shipped against each requisition.

Example:

V04696–185–750XY19059A—EA 5
N0018801776038XY3211BA—EA 200
AT650803050051AAT6391J—EA 1000

(D) When a TCN is assigned for each line item, enter on the next line the transportation control number prefixed by ''TCN.''

(ii) For service line items, enter the word ''SERVICE'' followed by as short a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13, and 14 when there is no shipment of material.

(iii) For all contracts administered by the Defense Contract Management Agency, with the exception of fast pay procedures, enter and complete the following:
Gross Shipping Wt.

_____
State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the MIRR, enter them only once after the last line item entry. Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (*e.g.,* 17X4911–14003–104).

(C) When the Navy transaction type code (TC), ''2T'' or ''7T'' is included in the appropriation data, enter ''TC 2T'' or ''TC 7T.''

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters ''GFP.''

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters ''REPLACEMENT SHIPMENT.'' (See F–401, Block 17, for replacement indicators.)

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, *e.g.,* ''AERNO 60–6354.''

(H) For items shipped with missing components, enter and complete the following:

''Item(s) shipped short of the following component(s):

NSN or comparable identification _____, Quantity _____, Estimated Value _____, Authority _____''

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

''These components were listed as shortages on shipment number _____, date shipped _____''

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

''Return to _____, Quantity _____, Item _____, Ownership (Government/contractor).''

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

''Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results.''

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter ''PAYMENT COPY'' in approximately one-half inch outline type style letters with ''FORWARD TO BLOCK 12 ADDRESS'' in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words ''GFP UNIT VALUE.''

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. _____, Contract Modification No. _____, dated _____

(17) Block 17—Quantity shipped/received.

(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a ''Z'' below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to enter a ''Z'' below the quantity; or

(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see F–405) coving the final shipment of the line item from the prime contractor's plant by addition of a ''Z'' below the quantity. Do not use the ''Z'' on deliveries which equal or exceed the contract line item quantity.

(iii) For replacement shipments, enter ''A'' below the last digit of the quantity, to designate first replacement, ''B'' for second replacement, etc. Do not use the final shipment indicator ''Z'' on underrun deliveries when a final line item shipment is replaced.

17. QUANTITY

SHIP/REC'D

1000

(10)

Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 stating the reason for the difference.

(18) Block 18—Unit. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18. UNIT

LB

(SH)

(19) Block 19—Unit price. The contractor may, at its option, enter unit prices on all MIRR copies, except as a minimum:

(i) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an ''E'' after the unit price.

(ii) Use the procedures in F–406 when the MIRR is used as an invoice.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite ''GFP UNIT VALUE'' entry in Block 16.

(iv) Price all copies of DD Forms 250 for FMS shipments with actual prices, if available. If actual price are not available, use estimated prices. When the price is estimated, enter an ''E'' after the price.

(20) Block 20—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21—Contract quality assurance (CQA).

(i) The words ''conform to contract'' contained in the printed statements in Blocks 21a and 21b relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Agency.

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor

shall enter in capital letters ''CERTIFICATE OF CONFORMANCE'' in Block 21a on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Agency. In addition, attach a copy of the signed certificate to, or enter on, copies of the MIRR sent with shipment.

(iv) Origin.

(A) The authorized Government representative must—

(1) Place an ''X'' in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of the statement and an explanatory note in Block 16;

(2) Sign and date;

(3) Enter the typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(B) When alternative release procedures apply—

(1) The contractor or subcontractor shall complete the entries required under paragraph (A) and enter in capital letters ''ALTERNATIVE RELEASE PROCEDURE'' on the next line following the printed CQA/acceptance statement.

(2) When acceptance is at origin and contract administration is performed by an office other than the Defense Contract Management Agency, the contractor shall furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(3) When acceptance is at origin and contract administration is performed by the Defense Contract Management Agency, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–501, Table 1).

(C) When fast pay procedures apply, the contractor or subcontractor shall enter in capital letters ''FAST PAY'' on the next line following the printed CQA/acceptance statement. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall enter in capital letters ''CERTIFICATE OF CONFORMANCE'' as required by paragraph (b)(21)(iii) of this appendix.

(1) For contracts administered by an office other than the Defense Contract Management Agency, furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(2) For contracts administered by the Defense Contract Management Agency, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(3) When acceptance is at destination, no entry shall be made other than ''CERTIFICATE OF CONFORMANCE.''

(v) Destination.

(A) When acceptance at origin is indicated in Block 21a, make no entries in Block 21b.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative must—

(1) Place an ''X'' in the appropriate box(es);

(2) Sign and date; and

(3) Enter typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(C) When ''ALTERNATIVE RELEASE PROCEDURE'' is entered in Block 21a and acceptance is at destination, the authorized Government representative must complete the entries required by paragraph (b)(21)(v)(B) of this appendix.

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within four work days (five days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 250 to the contract administration office cited in Block 10 for implementing contract closeout procedures.

(E) When ''FAST PAY'' is entered in Block 21a, make no entries in this block.

(22) Block 22—Receiver's use. The authorized representative of the receiving activity (Government or contractor) must use this block to show receipt, quantity, and condition. The authorized representative must—

(i) Enter the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block;

(ii) Sign; and

(iii) Enter typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(23) Block 23—Contractor use only. Self explanatory.

F–402 Mode/method of shipment codes.

See paragraph F–302.

F–403 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the DD Forms 250 at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

F–404 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical line item(s) of a contract are to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this appendix with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter ''See Attached Distribution List.''

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the ''total'' quantity shipped by line item or, if applicable, grouped identical line items.

(d) Use the DD Form 250c to list each individual ''Shipped To'' and ''Marked For'' with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Line item number(s);

(3) Quantity;

(4) MIPR number(s), preceded by ''MIPR,'' or the MILSTRIP requisition number, and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number, TCN, and mode of shipment code.

(e) The contractor may omit those distribution list pages of the DD Form 250c that are not applicable to the consignee. Provide a complete MIRR for all other distribution.

F–405 Correction instructions.

Make a new revised MIRR or correct the original when, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made. Use data identical to that of the original MIRR. Do not correct MIRRs for Blocks 19 and 20 entries. Make the corrections as follows—

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block. For example—

2. SHIPMENT NO.	17. QUANTITY
	SHIP/REC'D
(AAA0001)	
	19
See Block 16	(17)
_____	_____

16. STOCK/PART NO. DESCRIPTION

CORRECTIONS:

Refer Block 2: Change shipment No. AAA001 to AAA0010 on all pages of the MIRR.

Refer Blocks 15, 16, 17, and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(b) When corrections have been made to entries for line items (Block 15) or quantity (Block 17), enter the words ''CORRECTIONS HAVE BEEN VERIFIED'' on page 1. The authorized Government representative will date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the MIRR requiring correction with the words ''CORRECTED COPY.'' Avoid obliterating any other entries. Where corrections are

made only on continuation sheets, also mark page number 1 with the words ''CORRECTED COPY.''

(d) Page 1 and only those continuation pages marked ''CORRECTED COPY'' shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

F–406 Invoice instructions.

(a) Contractors shall submit payment requests and receiving reports in electronic form, unless an exception in DFARS 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the WAWF electronic form (see paragraph (b) of the clause at DFARS 252.232–7003) fulfills the requirement for an MIRR.

(b) If the contracting officer authorizes the contractor to submit an invoice in paper form, the Government encourages, but does not require, the contractor to use the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare the MIRR and forward the required number of copies to the payment office as follows:

(1) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(2) Mark in letters approximately one inch high, first copy: ''ORIGINAL INVOICE,'' for all invoice submissions; and three copies: ''INVOICE COPY,'' when the payment office requires four copies. Questions regarding the appropriate number of copies (*i.e.,* one or four) should be directed to the applicable payment office.

(3) Forward the appropriate number of copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(4) Separate the copies of the MIRR used as an invoice from the copies of the MIRR used as a receiving report.

F–407 Packing list instructions.

Contractors may use copies of the MIRR as a packing list. The packing list copies are in addition to the copies of the MIRR required for standard distribution (see F–501). Mark them ''PACKING LIST.''

F–408 Receiving instructions.

When the MIRR is used for receiving purposes, local directives shall prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see F–401(b)(21)(v) for instructions.

PART 5—Distribution of Wide Area Workflow Receiving Report (WAWF RR), DD Form 250 and DD Form 250C

F–501 Distribution of WAWF RR.

Use of the WAWF electronic form satisfies the distribution requirements of this section, except for the copies required to accompany shipment.

F-502 Distribution of DD FORM 250 AND DD FORM 250C.

(a) The contractor is responsible for distributing the DD Form 250, Material Inspection and Receiving Report (MIRR) including mailing and payment of postage.

(b) Contractors shall distribute MIRRs using the instructions in Tables 1 and 2.

(c) Contractors shall distribute MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 (Block 21a) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(3) Shipment when CQA and acceptance are to be performed at destination.

(e) Do not send the consignee copies (via mail) on overseas shipments to port of embarkation (POE). Send them to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

Material Inspection And Receiving Report

TABLE 1—STANDARD DISTRIBUTION

With Shipment*	2
Consignee (via mail)	1
(For Navy procurement, include unit price)	
(For foreign military sales, consignee copies are not required)	
Contract Administration Office (CAO)	1
(Forward direct to address in Block 10 except when addressee is a Defense Contract Management Agency (DCMA) office and a certificate of conformance or the alternative release procedures (see F–301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)	
Purchasing Office	1
Payment Office**	2
(Forward direct to address in Block 12 except—	
(i) When address in Block 10 is a DCMA office and payment office in Block 12 is the Defense Finance and Accounting Service, Columbus Center, do not make distribution to the Block 12 addressee;	
(ii) When address in Block 12 is the Defense Finance and Accounting Service, Columbus Center/Albuquerque Office (DFAS–CO/ALQ), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice;	
(iii) When acceptance is at destination and a Navy finance office will make payment, forward to destination; and	
(iv) When a certificate of conformance or the alternative release procedures (see F–301, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.	
ADP Point for CAO (applicable to Air Force only)	1
(When DFAS–CO/ALQ is the payment office in Block 12, send one copy to DFAS–CO/ALQ immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DFAS–CO/ALQ.)	
CAO of Contractor Receiving GFP	1
(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59–H).)	

* Attach as follows:

** Payment by Defense Finance and Accounting Service, Columbus Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office.

Type of shipment	Location
Carload or truckload	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload	Affix to container number one or container truckload bearing lowest number.
Mail, including parcel post	Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.

Type of shipment	Location
Pipeline, tank car, or railroad cars for coal movements	Forward with consignee copies.

MATERIAL INSPECTION AND RECEIVING REPORT TABLE 2—SPECIAL DISTRIBUTION

As required	Address	Number of copies
Each: Navy Status Control Activity, Army, Air Force, DLA Inventory Control Manager.	Address specified in contract	*1
Quality Assurance Representative	Address specified by the assigned quality assurance representative.	1
Transportation Office issuing GBL (attach to GBL memorandum copy).	CAO address unless otherwise specified in the contract	1
Purchasing Office other than office issuing contract	Address specified in the contract	1
Foreign Military Sales Representative	Address specified in the contract	8
Military Assistance Advisory Group (Grant Aid shipments)	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1
Army Foreign Military Sales	Commander, U.S. Army Security Assistance Command, ATTN: AMSAC–OL, 54 ''M'' Avenue, Suite 1, New Cumberland, PA 17070–5096.	1
Air Force On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	HQ Air Force Materiel Command, LGX–AVDO, Area A, Building 262, Room N142, 4375 Chidlaw Road, Wright-Patterson AFB, OH 45433–5006.	1
When above items are delivered to aircraft modification centers.	DCMA	1
Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada.	National Defence Headquarters, Ottawa, Ontario Canada, K1A OK4 ATTN: DPSUPS3.	1
Other than Canada	Address in the contract	1
When consignee is an Air National Guard Activity	Consignee address (Block 13), ATTN: Property Officer	3
Navy		
Navy Foreign Military Sales	Naval Inventory Control Point Deputy Commander for International Programs (NAVICP Code P761), 700 Robbins Avenue, Philadelphia, PA 19111–5095.	2
When typed code (TC) 2T or 7T is shown in Block 16, or when shipment is consigned to another contractor's plant for a Government representative or when Block 16 indicates shipment includes GFP.	Naval Inventory Control Point (Code 0142) for aviation type material, 700 Robbins Avenue, Philadelphia, PA 19111–5098 and. Naval Inventory Control Point (Code 0143) for all other material 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055–0788.	2
Bulk Petroleum Shipments	Cognizant Defense Fuel Region (see Table 4)	1

*Each addressee.

Part 6—Preparation of the DD Form 250–1 (Loading Report)

F–601 Instructions.

Prepare the DD Form 250–1 using the following instructions when applied to a tanker or barge cargo lifting. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/barge. Line out ''TANKER'' or ''BARGE'' as appropriate and place an ''X'' to indicate loading report.

(b) Block 2—Inspection office. Enter the name and location of the Government office conducting the inspection.

(c) Block 3—Report No. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. If shipment is made from more than one location against the same contract, use this numbering system at each location.

(d) Block 4—Agency placing order on shipper, city, state and/or local address (loading). Enter the applicable Government activity.

(e) Block 5—Department. Enter military department owning product being shipped.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number.

(g) Block 7—Name of prime contractor, city, state and/or local address (loading). Enter the name and address of the contractor as shown in the contract.

(h) Block 8—Storage contract. Enter storage contract number if applicable.

(i) Block 9—Terminal or refinery shipped from, city, state and/or local address. Enter the name and location of the contractor facility from which shipment is made. Also enter delivery point in this space as either ''FOB Origin'' or ''FOB Destination.''

(j) Block 10—Order No. on supplier. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

(k) Block 11—Shipped to: (receiving activity, city, state and/or local address). Enter the name and geographical address of the consignee as shown on the shipping order.

(l) Block 12—B/L number. If applicable, enter the initials and number of the bill of lading. If a commercial bill of lading is later authorized to be converted to a Government bill of lading, show ''Com. B/L to GB/L.''

(m) Block 13—Reqn. or request No. Enter number and date from the shipping instructions.

(n) Block 14—Cargo No. Enter the cargo number furnished by the ordering office.

(o) Block 15—Vessel. Enter the name of tanker or barge.

(p) Block 16—Draft arrival. Enter the vessel's draft on arrival.

(q) Block 17—Draft sailing. Enter the vessel's draft on completion of loading.

(r) Block 18—Previous two cargoes. Enter the type of product constituting previous two cargoes.

(s) Block 19—Prior inspection. Leave blank.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after loading.

(u) Block 21—Appropriation (loading). Enter the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show ''Army,

Navy, or Air Force (as appropriate) owned stock.''

(v) Block 22—Contract item no. Enter the contract item number applicable to the shipment.

(w) Block 23—Product. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

(x) Block 24—Specifications. Enter the specification and amendment number shown in the contract.

(y) Block 25—Statement of quantity. Enter in the ''LOADED'' column, the net barrels, net gallons, and long tons for the cargo loaded. NOTE: If more than ½ of 1 percent difference exists between the ship and shore quantity figures, the contractor shall immediately investigate to determine the cause of the difference. If necessary, prepare corrected documents; otherwise, put a statement in Block 28 as to the probable or actual cause of the difference.

(z) Block 26—Statement of quality.

(1) Under the heading ''TESTS'' list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(2) Under the heading ''SPECIFICATION LIMITS'' list the limits or requirements as stated in the specification or contract directly opposite each entry in the ''TESTS'' column. List waivers to technical requirements.

(3) Under the heading ''TEST RESULTS'' list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

(aa) Block 27—Time statement. Line out ''DISCHARGE'' and ''DISCHARGING.'' Complete all applicable entries of the time statement using local time. Take these dates and times from either the vessel or shore facility log. The Government representative shall ensure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (*e.g.,* 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

(bb) Block 28—Remarks. Use this space for reporting:

(1) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(2) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(3) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(4) When product title is vested in the U.S. Government, insert in capital letters ''U.S. GOVERNMENT OWNED CARGO.'' If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters ''CONTRACTOR OWNED CARGO.''

(5) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

(cc) Block 29—Company or receiving terminal. Line out ''OR RECEIVING TERMINAL'' and get the signature of the supplier's representative.

(dd) Block 30—Certification by government representative. Line out ''discharged.'' The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or its agent.

Part 7—Preparation of the DD Form 250–1 (Discharge Report)

F–701 Instructions.

Prepare the DD Form 250–1 using the following instructions when applied to a tanker or barge discharge. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/barge. Line out ''TANKER'' or ''BARGE'' as applicable and place an ''X'' to enter discharge report.

(b) Block 2—Inspection office. Enter Government activity performing inspection on the cargo received.

(c) Block 3—Report No. Leave blank.

(d) Block 4—Agency placing order on shipper, city, state and/or local address (loading). Enter Government agency shown on loading report.

(e) Block 5—Department. Enter Department owning product being received.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number shown on the loading report.

(g) Block 7—Name of prime contractor, city, state and/or local address (loading). Enter the name and location of contractor who loaded the cargo.

(h) Block 8—Storage contract. Enter the number of the contract under which material is placed in commercial storage where applicable.

(i) Block 9—Terminal or refinery shipped from, city, state and/or local address. Enter source of cargo.

(j) Block 10—Order No. on supplier. Make same entry appearing on loading report.

(k) Block 11—Shipped to: (RECEIVING ACTIVITY, CITY, STATE AND/OR LOCAL ADDRESS). Enter receiving activity's name and location.

(l) Block 12—B/L number. Enter as appears on loading report.

(m) Block 13—Reqn. or request No. Leave blank.

(n) Block 14—Cargo No. Enter cargo number shown on loading report.

(o) Block 15—Vessel. Enter name of tanker or barge discharging cargo.

(p) Block 16—Draft arrival. Enter draft of vessel upon arrival at dock.

(q) Block 17—Draft sailing. Enter draft of vessel after discharging.

(r) Block 18—Previous two cargoes. Leave blank.

(s) Block 19—Prior inspection. Enter the name and location of the Government office which inspected the cargo loading.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after discharging.

(u) Block 21—Appropriation (loading). Leave blank.

(v) Block 22—Contract item No. Enter the item number shown on the loading report.

(w) Block 23—Product. Enter information appearing in Block 23 of the loading report.

(x) Block 24—Specifications. Enter information appearing in Block 24 of the loading report.

(y) Block 25—Statement of quantity. Enter applicable data in proper columns.

(1) Take ''LOADED'' figures from the loading report.

(2) Determine quantities discharged from shore tank gauges at destination.

(3) If a grade of product is discharged at more than one point, calculate the loss or gain for that product by the final discharge point.

Report amounts previously discharged on discharge reports prepared by the previous discharge points. Transmit volume figures by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(4) The loss or gain percentage shall be entered in the ''PERCENT'' column followed by ''LOSS'' or ''GAIN,'' as applicable.

(5) On destination acceptance shipments, accomplish the ''DISCHARGED'' column only, unless instructed to the contrary.

(z) Block 26—Statement of quality.

(1) Under the heading ''TESTS'' enter the verification tests performed on the cargo preparatory to discharge.

(2) Under ''SPECIFICATION LIMITS'' enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(3) Enter the results of tests performed under the heading ''TEST RESULTS.''

(aa) Block 27—Time statement. Line out ''LOAD'' and ''LOADING.'' Complete all applicable entries of the time statement using local time. Take the dates and times from either the vessel or shore facility log. The Government representative shall ensure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall

appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (*e.g.,* 10 Sept. 67).

(bb) Block 28—Remarks. Use this space for reporting important facts such as:

(1) Delays, their cause, and responsible party (vessel, shore facility, Government representative, or others).

(2) Abnormal individual losses contributing to the total loss. Enter the cause of such losses as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (enter tanks in which contained), spillages, line breaks, etc. Note where gravity group change of receiving tank contents results in a fictitious loss or gain. Note irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point if they indicate an abnormal transportation loss or contamination.

(cc) Block 29—Company or receiving terminal. Line out ''COMPANY OR.'' Secure the signature of a representative of the receiving terminal.

(dd) Block 30—Certification by government representative. Line out ''loaded.'' The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or the vessel's agent.

Part 8—Distribution of the DD Form 250–1

F–801 Distribution.

Follow the procedures at PGI F–801 for distribution of DD Form 250–1.

F–802 Corrected DD Form 250–1.

Follow the procedures at PGI F–802 when corrections to DD Form 250–1 are needed.

[FR Doc. 2011–23958 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 201

RIN 0750–AH35

Defense Federal Acquisition Regulation Supplement; Designation of a Contracting Officer's Representative (DFARS Case 2011–D037)

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that a contracting officer's representative must be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization (NATO)/coalition partner, and that contractor personnel shall not serve as contracting officer's representatives.

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, telephone 703–602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

This rule is based on a request from Headquarters NATO Training Mission—Afghanistan (NTM–A) to permit the designation of non-U.S. Government employees as contracting officer's representatives (CORs) in support of the NTM–A's efforts to train the Afghan National Security Force (ANSF). The NTM–A supports the growth of the ANSF through numerous activities including the contracting of civilian mentoring services. These contracts for mentoring services to the ANSF require the contractor to deploy teams throughout the joint area of operations and interact with non-U.S. coalition partners exclusively. To provide assurance that contractual requirements are being met, it is crucial that contract performance information be submitted to the contracting officer by those coalition units with insight of contractor activities.

Contracting officers supporting contingency operations abroad require the flexibility to ensure the proper oversight of contract performance, such as at locations where there is no U.S. presence or the designation of a U.S. Government COR is not viable. This rule provides that flexibility by clarifying at DFARS 201.602–2 that a COR must be an employee, military or civilian, of the U.S. Government, a foreign government, or a NATO/coalition partner. CORs must meet all training and experience qualifications commensurate with the delegated responsibilities per DFARS 201.602–2(2)(ii). In addition, the rule makes clear that contractor personnel may not serve as CORs. Contractor personnel may, however, continue to perform technical oversight functions on behalf of the contracting officer, excluding those that are inherently governmental (see FAR 7.5).

DoD has issued this rule as a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. Therefore, public comment is not required in accordance with 41 US.C. 1707.

II. Executive Orders 12866 and 13563

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. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501, and public comment is not required in accordance with 41. U.S.C. 1707.

IV. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 201

Government Procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 201 is amended as follows:

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR part 201 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 201.602–2 is amended to revise paragraph (2)(i) to read as follows:

201.602–2 Responsibilities.

* * * * *

(2) * * *

(i) Must be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization/coalition partner. In no case shall contractor personnel serve as CORs;

* * * * *

[FR Doc. 2011–23950 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 209, 212, 215, 219, 232, 237, 243, 252, and Appendix I to Chapter 2

RIN 0750–AG38

Defense Federal Acquisition Regulation Supplement; Positive Law Codification of Title 41 U.S.C. (DFARS Case 2011–D036)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform references throughout the DFARS to the new Codification of Title 41, United States Code, ''Public Contracts.''

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

On January 4, 2011, Public Law 111–350 enacted a new codified version of Title 41, United States Code (U.S.C.), entitled ''Public Contracts.'' The purpose of this final rule is to update all references to Title 41 in the DFARS to conform to the recodification.

DoD has issued a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. Therefore public comment is not required in accordance with 41 U.S.C. 1303.

II. Executive Orders 12866 and 13563

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. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and public comment is not required in accordance with 41 U.S.C. 1707.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 201, 209, 212, 215, 219, 232, 237, 243, 252, and Appendix I to Chapter 2

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 209, 212, 215, 219, 232, 237, 243, 252 and appendix I to chapter II are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 209, 212, 215, 219, 232, 237, 243, 252, and appendix I to chapter II continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.107 [Amended]

■ 2. Amend section 201.107 by—

■ (a) Removing ''Section'' from the introductory text and adding in its place ''section''; and

■ (b) Removing ''425'' from the introductory text and adding in its place ''1304''.

201.304 [Amended]

■ 3. Amend section 201.304(2) by—

■ (a) Removing ''Section'' and adding in its place ''section''; and

■ (b) Removing ''425'' and adding in its place ''1304''.

PART 209—CONTRACTOR QUALIFICATIONS

209.406–2 [Amended]

■ 4. Amend section 209.406–2(2) by—

■ (a) Removing ''Section'' and adding in its place ''section'';

■ (b) Removing ''(Pub. L. 110–181)''; and

■ (c) Removing ''423(e)(3)(A)(iii)'' and adding in its place ''2105(c)(1)(C)''.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.207 [Amended]

■ 5. Amend section 212.207—

■ (a) In paragraph (b)(i) by removing ''403(12)(E)'' and adding in its place ''103''; and

■ (b) In paragraph (b)(iii)(A) by removing ''403(12)(F)'' and adding in its place ''103''.

PART 215—CONTRACTING BY NEGOTIATION

■ 6. Revise the heading of section 215.403–1 to read as follows:

215.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

219.703 [Amended]

■ 7. Amend section 219.703(a) introductory text by—

■ (a) Removing ''46–48'' and adding in its place ''8502–8504''; and

■ (b) Removing ''Section'' and adding in its place ''section''.

PART 232—CONTRACT FINANCING

232.803 [Amended]

■ 8. Amend section 232.803(d) by removing ''Section 3737(e) of the Revised Statutes (41 U.S.C. 15)'' and adding in its place ''41 U.S.C. 6305''.

PART 237—SERVICE CONTRACTING

237.102–71 [Amended]

■ 9. Amend section 237.102–71(a)(2) by removing ''357(b)'' and adding in its place ''6701''.

PART 243—CONTRACT MODIFICATIONS

243.204–71 [Amended]

■ 10. Amend section 242.204–71(c) by removing ''605(c)'' and adding in its place ''7103''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Amended]

■ 11. Amend section 252.203–7000 by—

■ (a) Removing the clause date of ''(JAN 2009)'' and adding in its place ''(SEP 2011)'';

■ (b) In paragraph (a)(2)(i) introductory text, removing ''403(16)'' and adding in its place ''131''; and

■ (c) In paragraph (c), removing ''423(e)(3)'' and adding in its place ''2105(c)''.

252.212–7001 [Amended]

■ 12. Amend section 252.212–7001 by—

■ (a) Removing the clause date of ''(AUG 2011)'' and adding in its place ''(SEP 2011)''; and

■ (b) In paragraph (b)(2) removing ''Section'' and adding in its place ''section'';

■ (c) In paragraph (b)(2) removing the word ''note''.

252.219–7003 [Amended]

■ 13. Amend section 252.219–7003 by—

■ (a) Removing the clause date of ''(OCT 2010)'' and adding in its place ''(SEP 2011)''; and

■ (b) In paragraph (d), removing ''46–48'' and adding in its place ''8502–8504''.

252.225–7001 [Amended]

■ 14. Amend section 252.225–7001 by—

■ (a) Removing the clause date of ''(JAN 2009)'' and adding in its place ''(SEP 2011)'';

■ (b) In paragraph (b), removing ''Section 10a-d'' and adding in its place ''chapter 83''; and

■ (c) In paragraph (b) removing ''431'' and adding in its place ''1907''.

252.227–7037 [Amended]

■ 15. Amend section 252.227–7037 by—

■ (a) Removing the clause date ''(SEP 1999)'' and adding in its place ''(SEP 2011)''; and

■ (b) In paragraph (e)(3), removing ''601, *et seq.''* and adding in its place ''7101''.

APPENDIX I TO CHAPTER 2—[Amended]

■ 16. Amend section I–101.4 by removing ''46'' and adding in its place ''8502''.

[FR Doc. 2011–23951 Filed 9–19–11; 8:45 am]

BILLING CODE ;P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, and 252

RIN 0750–AH02

Defense Federal Acquisition Regulation Supplement (DFARS); Alternative Line Item Structure (DFARS Case 2010–D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a standard procedure for offerors to propose an alternative line item structure that reflects the offeror's business practices for selling and billing commercial items and initial provisioning spares for weapon systems

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 21847 on April 19, 2011, to add DFARS language that provides offerors the opportunity to propose an alternative line item structure in solicitations for commercial items and initial provisioning spares. This DFARS change will allow offerors to provide information about their products that may not have been known to the Government prior to issuance of the solicitation. No public comments were received regarding the proposed rule.

DoD identified the need to propose an alternative line item structure during process reviews and working group sessions that assessed destination-acceptance procedures. The process reviews performed by DoD cross-service working groups, which were chartered by the Defense Finance and Accounting System, examined issues causing problems in the receipt and acceptance phase for contract deliverables and payments.

This group determined that the level of detail in the requirements description and line item structure is not always sufficient for delivery, payment, and subsequent inventory management of the items delivered. For example, the contract line item may be for a desktop computer, but the actual items delivered, invoiced, and inventoried may reflect a separate monitor, keyboard, and central processing unit. The resultant misalignment of transaction detail (*i.e.,* contract line item, invoiced unit, delivery and inventory unit) is the cause of failures in the electronic processes of the DoD's business enterprise requiring manual intervention with potential delays in contractor payment.

To address this recurring problem, this rule establishes and standardizes a process to enable offerors to propose changes in their offer to the solicitation's line item structure. Establishing such a process is a first step towards managing variation in these transactions by eliminating or reducing manual intervention.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small businesses. Further, this change does not add to, or delete from existing requirements or authorities for entities to include alternative line item structures in their offers. This rule is formalizing a process to facilitate offerors' ability to request changes to the line item structure.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.7103 by adding a new paragraph (g) to read as follows:

204.7103–1 Criteria for establishing.

* * * * *

(g) Certain commercial items and initial provisioning spares for weapons systems are requested and subsequently solicited using units of measure such as kit, set, or lot. However, there are times when individual items within that kit, set, or lot are not grouped and delivered in a single shipment. This creates potential contract administration issues with inspection, acceptance, and payment. In such cases, solicitations should be structured to allow offerors to provide information about products that may not have been known to the Government prior to solicitation and propose an alternate line item structure as long as the alternate is consistent with the requirements of 204.71, which provides explicit guidance on the use of contract line items and subline items, and with PGI 204.71.

■ 3. Revise section 204.7109 to read as follows:

204.7109 Solicitation provision and contract clause.

(a) Use the clause at 252.204–7006, Billing Instructions, in solicitations and contracts if Section G includes—

(1) Any of the standard payment instructions at PGI 204.7108(d)(1) through (6); or

(2) Other payment instructions, in accordance with PGI 204.7108(d)(12), that require contractor identification of the contract line item(s) on the payment request.

(b) Use the provision at 252.204–7011, Alternative Line Item Structure, in solicitations for commercial items and initial provisioning spares.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 212.301 by revising paragraph (f)(iv) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(iv) Use the provisions and clauses prescribed elsewhere in DFARS as follows:

(A) Use the provision at 252.204–7011, Alternative Line Item Structure, as prescribed in 204.7109(b).

(B) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in 209.104–70(a).

(C) Use the clause at 252.211–7003, Item Identification and Valuation, as prescribed in 211.274–4.

(D) Use the clause at 252.211–7006, Radio Frequency Identification, as prescribed in 211.275–3.

(E) Use the provision at 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in 225.7003–5(b).

(F) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402–4.

(G) Use the clause at 252.225–7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that include the clause at 252.225–7040.

(H) Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

(I) Use the clause at 252.232–7010, Levies on Contract Payments, as prescribed in 232.7102.

(J) Use the clause at 252.232–7011, Payments in Support of Emergencies and Contingency Operations, as prescribed in 232.908.

(K) Use the clause at 252.246–7003, Notification of Potential Safety Issues, as prescribed in 246.371.

(L) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(e).]

(M) Use the clause at 252.247–7027, Riding Gang Member Requirements, as prescribed in 247.574(f).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 252.204–7011 to read as follows:

252.204–7011 Alternative Line Item Structure.

As prescribed in 204.7109(b), insert the following provision:

ALTERNATIVE LINE-ITEM STRUCTURE (SEP 2011)

(a) Line items are the basic structural elements in a solicitation or contract that provide for the organization of contract requirements to facilitate pricing, delivery, inspection, acceptance and payment. Line items are organized into contract line items, subline items, and exhibit line items. Separate line items should be established to account for separate pricing, identification (see section 211.274 of the Defense Federal Acquisition Regulation Supplement), deliveries, or funding. The Government recognizes that the line item structure in this solicitation may not conform to every offeror's practices. Failure to correct these issues can result in difficulties in accounting for deliveries and processing payments. Therefore, offerors are invited to propose an alternative line item structure for items on which bids, proposals, or quotes are requested in this solicitation to ensure that the resulting contract structure is economically and administratively advantageous to the Government and the Contractor.

(b) If an alternative line item structure is proposed, the structure must be consistent with subpart 204.71 of the Defense Federal Acquisition Regulation Supplement and PGI 204.71. A sample solicitation line-item structure and a corresponding offer of a proposed alternative line-item structure follow.

Solicitation:

Item No.	Supplies/Service	Quantity	Unit	Unit price	Amount
0001	Computer, Desktop with CPU, Monitor, Keyboard and Mouse	20	EA	.....	

Alternative line-item structure offer where monitors are shipped separately:

Item No.	Supplies/Service	Quantity	Unit	Unit Price	Amount
0001	Computer, Desktop with CPU, Keyboard and Mouse	20	EA		
0002	Monitor	20	EA		

(End of provision)

[FR Doc. 2011–23953 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

RIN 0750–AG39

Defense Federal Acquisition Regulation Supplement; Annual Representations and Certifications (DFARS Case 2009–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform it to higher-level changes in the Code of Federal Regulation relating to annual representations and certifications.

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

DFARS 204.1202 prescribes use of DFARS provision 252.204–7007, Alternate A, Annual Representations and Certifications, in contracts that also incorporate Federal Acquisition Regulation (FAR) provision 52.204–8, Annual Representations and Certifications. FAR 52.204–8 was changed to add a new paragraph (c), which lists the applicable representations and certifications in the Online Representations and Certifications Application (ORCA). This FAR change necessitated a similar modification of DFARS 252.204–7007.

DoD published a proposed rule in the **Federal Register** at 75 FR 71646, on November 24, 2010, to update DFARS 204.1202 and 252.204–7007. The public comment period closed January 24, 2011. Two respondents submitted comments on the proposed rule. A discussion of the comments is provided below.

II. Discussion and Analysis

A. Applicability

Comment: A respondent recommended DFARS 252.212–7000, Offeror Representations and Certifications—Commercial Items, be retained in the list of representations and certification at 204.1202(2) that are not to be included in the solicitation when using the provision DFARS 252.204–7007, because that provision is to be used in non-commercial solicitations only. Another respondent recommended that DFARS 204.1202(2) include provisions that are applicable to solicitations, rather than those not applicable, similar to FAR 52.204–8.

Response: The first respondent is correct that DFARS provision 252.212–7000 is for commercial solicitations only and will not be included in solicitations that include DFARS 252.204–7007, because that provision is used when FAR 52.204–8 is included, and that FAR provision is not used in solicitations issued under FAR part 12 for acquisition of commercial items. However, inclusion of DFARS 252.212–7000 on the list at DFARS 204.1202(2) is not appropriate, because the list at DFARS 204.1202(2) should include only provisions that are listed in 252.204–7007, Alternate A, Annual Representations and Certifications. Therefore, the final rule does not retain 252.212–7000 on the list at 204.1202(2). Further, DFARS 204.1202(2) introductory text was amended to clarify that the listed provisions will not be included separately in the solicitation, because the appropriate representations and certifications will be covered by inclusion of DFARS 252.204–7007 in the solicitation.

Comment: A respondent recommended the representations at DFARS 252.216–7003 and DFARS 252.239–7011 be retained in the list of representations and certifications at DFARS 252.204–7007 because the Contractor is asked to make a representation about itself.

Response: DFARS 252.216–7003 will be retained in the list. DFARS 252.239–7011, however, will not be included because the clause requires contractors to make certain representations during contract performance concerning reimbursement of special construction and equipment costs. According to DFARS 239.7408–1(a), ''special construction normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service requirements.'' Since these are costs that occur during contract performance, the contractor would not be able to make a proper representation prior to award.

B. Clarification

Comment: A respondent recommended modifying the second sentence of DFARS 252.204.7007(e) by removing ''as indicated in (d) and (e) of this provision'' and adding ''as well as those in (d) above'' after ''posted electronically.''

Response: When using the alternate at DFARS 252.204–7007, paragraphs (d) and (e) replace paragraph (d) of FAR 52.204–8. DFARS 252.204–7007(e) provides that by submission of an offer, the offeror verifies that the FAR 52.204–8(c) representations and certifications and the DFARS 252.204–7007(d) representations and certifications are up to date in ORCA. Accordingly, the language in paragraph (e) was changed to include the statement ''as indicated in FAR 52.204–8(c) and paragraph (d) of this provision.''

Comment: A respondent commented that the second to last line of 252.204–7007(e) should say ''provision number'' instead of ''clause number.''

Response: The term ''clause number'' was changed to ''provision number'' in the second to last line of 252.204–7007(e) and in the first block of the table provided.

C. Additional Changes

DFARS 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, which was inadvertently omitted from the listing of provisions, has been added to 204.1202(2)(i) and 252.204–7007(d)(1)(i). The Alternates for 252.225–7020, Trade Agreements Certificate, and 252.225–7035, Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate, were added to 252.204–7007(d)(2)(iii), and (vi), respectively.

Additionally, to further clarify applicability of the various provisions, 252.204–7007(d) was reformatted into two sections to separately list the DFARS provisions that the contracting officer may individually select if one of the provisions applies for a particular

procurement. Additionally, the prescription for use of 252.204–7007 was reformatted to include it as a lead in to the provision rather than being a part of the provision.

III. Executive Orders 12866 and 13563

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. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning for the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small businesses.

A proposed rule published in the **Federal Register** at 75 FR 73997, on November 30, 2010, invited comments from small businesses and other interested parties. No comments were received from small entities on the affected DFARS subpart with regard to small businesses.

V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.1202 is revised to read as follows:

204.1202 Solicitation provision.

When using the provision at FAR 52.204–8, Annual Representations and Certifications—

(1) Use the provision with 252.204–7007, Alternate A, Annual Representations and Certifications; and

(2) Do not include separately in the solicitation the following provisions, which are included in DFARS 252.204–7007:

(i) 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country.

(ii) 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus.

(iii) 252.209–7002, Disclosure of Ownership or Control by a Foreign Government.

(iv) 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.

(v) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

(vi) 252.225–7020, Trade Agreements Certificate.

(vii) 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products.

(viii) 252.225–7031, Secondary Arab Boycott of Israel.

(ix) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(x) 252.225–7042, Authorization to Perform.

(xi) 252.229–7003, Tax Exemptions (Italy).

(xii) 252.229–7005, Tax Exemptions (Spain).

(xiii) 252.247–7022, Representation of Extent of Transportation by Sea.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.204–7007 is revised to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

As prescribed in 204.1202, use the following provision:

Alternate A, Annual Representations and Certifications (Sep 2011)

Substitute the following paragraphs (d) and (e) for paragraph (d) of the provision at FAR 52.204–8:

(d)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country. Applies to all solicitations expected to result in contracts of $150,000 or more.

(ii) 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus. Applies to all solicitations and contracts with institutions of higher education.

(iii) 252.216–7003, Economic Price Adjustment–Wage Rates or Material Prices Controlled by a Foreign Government. Applies to fixed-price supply and service contracts when the contract is to be performed wholly or in part in a foreign country, and a foreign government controls wage rates or material prices and may during contract performance impose a mandatory change in wages or prices of materials.

(iv) 252.225–7042, Authorization to Perform. Applies to all solicitations when performance will be wholly or in part in a foreign country.

(v) 252.229–7003, Tax Exemptions (Italy). Applies to solicitations and contracts when contract performance will be in Italy.

(vi) 252.229–7005, Tax Exemptions (Spain). Applies to solicitations and contracts when contract performance will be in Spain.

(vii) 252.247–7022, Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold.

(2) The following representations or certifications in ORCA are applicable to this solicitation as indicated by the Contracting Officer: [*Contracting Officer check as appropriate.*]

____(i) 252.209–7002, Disclosure of Ownership or Control by a Foreign Government.

____(ii) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

____(iii) 252.225–7020, Trade Agreements Certificate.

____Use with Alternate I.

____(iv) 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products.

____(v) 252.225–7031, Secondary Arab Boycott of Israel.

____(vi) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

____Use with Alternate I.

____Use with Alternate II.

____Use with Alternate III.

(e) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) Web site at *https://orca.bpn.gov/.* After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204–8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the

NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*offeror to insert changes, identifying change by provision number, title, date].* These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS provision No.	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.
(End of provision)
[FR Doc. 2011–23947 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

RIN 0750–AH05

Defense Federal Acquisition Regulation Supplement; Passive Radio Frequency Identification (DFARS Case 2010–D014)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements relating to the use of passive radio frequency identification (RFID).

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Dustin Pitsch, telephone 703–602–0289.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 9714 on February 26, 2011, in response to a request of the Office of Logistics and Materiel Readiness of the Office of the Secretary of Defense (Acquisition, Technology, and Logistics) to update requirements relating to the use of passive radio frequency identification (RFID).

II. Discussion and Analysis

DoD received comments from two respondents in response to the proposed rule. One respondent expressed general support for the rule.

Comment: A respondent stated that RFID tags will play an expanded role in inventory management and asset protection for the DoD and expanded use should occur soon.

Response: DoD agrees that RFID use in inventory management is expanding and will continue to expand.

Comment: A respondent stated that RFID tracking is not the current industry standard for inventory management of pharmaceuticals and that adding this requirement would cost the suppliers and DoD a significant amount of time and money to implement. This respondent believes that the current use of 2D barcodes is sufficient for tracking pharmaceuticals and that the DoD should not require the use of passive RFID.

Response: DoD agrees and the final rule does not include a requirement for passive RFID use for pharmaceuticals.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows.

The DFARS previously listed approximately 20 specific DoD activity addresses and provides the authority for using other ship-to locations ''outside the contiguous United States'' under certain circumstances. However, the Defense Logistics Agency and the Navy proposed adding more than 200 additional sites, making it impracticable to list all DoD passive RFID addresses in the DFARS text or its associated clause. Instead, this rule adds a Web site for contractors to find the RFID Identifier for each specific DoD ship-to address that uses RFID technology. Including the Web site in the DFARS has the added benefit of enabling the addition of new ship-to addresses in the future as necessary without the need to revise the DFARS in each case. This final rule amends the revised, shortened list of ship-to addresses at DFARS 211.275–2(a)(2) to allow contracting officers to add tagging requirements to contract deliverables shipping to DoDAACs not specifically included in the list as they deem necessary.

The current OMB information collection justification for the clause associated with the current DFARS, 252.211–7006, entitled ''Radio Frequency Identification,'' lists the number of contractors impacted by the RFID requirement as 25,500. While each contractor has multiple submissions (one for each shipment), it takes only 1.12 seconds per response. The rule changes impact, if any, should decrease the response time and not increase it.

V. Paperwork Reduction Act

There are information collection requirements associated with the use of RFIDs. However, there will be no substantive change to the existing information collection requirements currently approved under OMB Information Control Number 0704–0434, DFARS; Radio Frequency Identification Advance Shipment Notices. Therefore, DoD has determined that the final rule has no material impact on the approved collection.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Mary Overstreet,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. The section heading for section 211.275 is revised to read as follows:

211.275 Passive radio frequency identification.

211.275–1 [Amended]

■ 3. Section 211.275–1 is amended to add the word ''Passive'' before the phrase ''Radio Frequency Identification''.

■ 4. Section 211.275–2 is amended to—

■ a. Revise paragraph (a) introductory text; and

■ b. Revise paragraph (a)(2).

The revisions read as follows:

211.275–2 Policy.

(a) Except as provided in paragraph (b) of this section, radio frequency identification (RFID), in the form of a passive RFID tag, is required for cases and palletized unit loads packaging levels and any additional consolidation level(s) deemed necessary by the requiring activity for shipments of items that—

* * * * *

(2) Will be shipped to one of the locations listed at *http://www.acq.osd.mil/log/rfid/* or to—

(i) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1; or

(ii) Any additional location(s) deemed necessary by the requiring activity.

* * * * *

■ 5. Section 211.275–3 is revised to read as follows:

211.275–3 Contract clause.

Use the clause at *252.211–7006,* Passive Radio Frequency Identification, in solicitations and contracts that will require shipment of items meeting the criteria at *211.275–2,* and complete paragraph (b)(1)(ii) of the clause at 252.211–7006 as appropriate.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 252.211–7006 is revised to read as follows:

252.211–7006 Passive Radio Frequency Identification.

As prescribed in *211.275–3*, use the following clause:

Passive Radio Frequency Identification (SEP 2011)

(a) *Definitions.* As used in this clause—

Advance shipment notice means an electronic notification used to list the contents of a shipment of goods as well as additional information relating to the shipment, such as passive radio frequency identification (RFID) or item unique identification (IUID) information, order information, product description, physical characteristics, type of packaging, marking, carrier information, and configuration of goods within the transportation equipment.

Bulk commodities means the following commodities, when shipped in rail tank cars, tanker trucks, trailers, other bulk wheeled conveyances, or pipelines:

(1) Sand.

(2) Gravel.

(3) Bulk liquids (water, chemicals, or petroleum products).

(4) Ready-mix concrete or similar construction materials.

(5) Coal or combustibles such as firewood.

(6) Agricultural products such as seeds, grains, or animal feed.

Case means either a MIL–STD–129 defined exterior container within a palletized unit load or a MIL–STD–129 defined individual shipping container.

Electronic Product Code™ (EPC®) means an identification scheme for universally identifying physical objects via RFID tags and other means. The standardized EPC™ data consists of an EPC™ (or EPC™ identifier) that uniquely identifies an individual object, as well as an optional filter value when judged to be necessary to enable effective and efficient reading of the EPC™ tags. In addition to this standardized data, certain classes of EPC™ tags will allow user-defined data. The EPC™ Tag Data Standards will define the length and position of this data, without defining its content.

EPCglobal® means a subscriber-driven organization comprised of industry leaders and organizations focused on creating global standards for the adoption of passive RFID technology.

Exterior container means a MIL–STD–129 defined container, bundle, or assembly that is sufficient by reason of material, design, and construction to protect unit packs and intermediate containers and their contents during shipment and storage. It can be a unit pack or a container with a combination of unit packs or intermediate containers. An exterior container may or may not be used as a shipping container.

Palletized unit load means a MIL–STD–129 defined quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized or skidded load is not considered to be a shipping container. A loaded 463L System pallet is not considered to be a palletized unit load. Refer to the Defense Transportation Regulation, DoD 4500.9–R, Part II, Chapter 203, for marking of 463L System pallets.

Passive RFID tag means a tag that reflects energy from the reader/interrogator or that receives and temporarily stores a small amount of energy from the reader/interrogator signal in order to generate the tag response. The only acceptable tags are EPC Class 1 passive RFID tags that meet the EPCglobal™ Class 1 Generation 2 standard.

Radio frequency identification (RFID) means an automatic identification and data capture technology comprising one or more reader/interrogators and one or more radio frequency transponders in which data transfer is achieved by means of suitably modulated inductive or radiating electromagnetic carriers.

Shipping container means a MIL–STD–129 defined exterior container that meets carrier regulations and is of sufficient strength, by reason of material, design, and construction, to be shipped safely without further packing (*e.g.,* wooden boxes or crates, fiber and metal drums, and corrugated and solid fiberboard boxes).

(b)(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall affix passive RFID tags, at the case- and palletized-unit-load packaging levels, for shipments of items that—

(i) Are in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11:

(A) Subclass of Class I—Packaged operational rations.

(B) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(C) Class IIIP—Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(D) Class IV—Construction and barrier materials.

(E) Class VI—Personal demand items (non-military sales items).

(F) Subclass of Class VIII—Medical materials (excluding pharmaceuticals, biologicals, and reagents—suppliers should limit the mixing of excluded and non-excluded materials).

(G) Class IX—Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(ii) Are being shipped to one of the locations listed at *http://www.acq.osd.mil/log/rfid/* or to—

(A) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1, or to—

(B) The following location(s) deemed necessary by the requiring activity:

Contract line, subline, or exhibit line item number	Location name	City	State	DoDAAC

(2) The following are excluded from the requirements of paragraph (b)(1) of this clause:

(i) Shipments of bulk commodities.

(ii) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedures.

(c) The Contractor shall—

(1) Ensure that the data encoded on each passive RFID tag are globally unique (*i.e.,* the tag ID is never repeated across two or more RFID tags) and conforms to the requirements in paragraph (d) of this clause;

(2) Use passive tags that are readable; and

(3) Ensure that the passive tag is affixed at the appropriate location on the specific level of packaging, in accordance with MIL–STD–129 (Section 4.9.2) tag placement specifications.

(d) *Data syntax and standards.* The Contractor shall encode an approved RFID tag using the instructions provided in the EPC™ Tag Data Standards in effect at the time of contract award. The EPC™ Tag Data Standards are available at *http://www.epcglobalinc.org/standards/*.

(1) If the Contractor is an EPCglobal™ subscriber and possesses a unique EPC™ company prefix, the Contractor may use any of the identifiers and encoding instructions described in the most recent EPC™ Tag Data Standards document to encode tags.

(2) If the Contractor chooses to employ the DoD identifier, the Contractor shall use its previously assigned Commercial and Government Entity (CAGE) code and shall encode the tags in accordance with the tag identifier details located at *http://www.acq.osd.mil/log/rfid/tag_data.htm.* If the Contractor uses a third-party packaging house to encode its tags, the CAGE code of the third-party packaging house is acceptable.

(3) Regardless of the selected encoding scheme, the Contractor with which the Department holds the contract is responsible for ensuring that the tag ID encoded on each passive RFID tag is globally unique, per the requirements in paragraph (c)(1) of this clause.

(e) *Advance shipment notice.* The Contractor shall use Wide Area WorkFlow (WAWF), as required by DFARS 252.232–7003, Electronic Submission of Payment Requests, to electronically submit advance shipment notice(s) with the RFID tag ID(s) (specified in paragraph (d) of this clause) in advance of the shipment in accordance with the procedures at *https://wawf.eb.mil/*.

(End of clause)

[FR Doc. 2011–23945 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 227, and 252

RIN 0750–AF84

Defense Federal Acquisition Regulation Supplement; Presumption of Development Exclusively at Private Expense (DFARS Case 2007–D003)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement to implement sections of the Fiscal Year (FY) 2007 and 2008 National Defense Authorization Act, including special requirements and procedures related to the validation of a contractor's or subcontractor's asserted restrictions on technical data and computer software.

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, 703–602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 802(b) of the FY 2007 National Defense Authorization Act (NDAA) (Pub. L. 109–364) and section 815 of the FY 2008 NDAA (Pub. L. 110–181). Section 802(b) modified 10 U.S.C. 2321(f)(2) with regard to the presumption of development at private expense for major systems. Section 815 revised 10 U.S.C. 2321(f)(2) to exempt commercially available off-the-shelf items from the requirements that section 802(b) established for major systems.

This final rule implements special requirements and procedures related to the validation of a contractor's or subcontractor's asserted restrictions on technical data and computer software. More specifically, the final rule affects these validation procedures in the context of two special categories of items: Commercial items (including commercially available off-the-shelf items), which may be referred to as the ''Commercial Rule;'' and major systems (including subsystems and components of major systems), which may be referred to as the ''Major Systems Rule.''

DoD published a proposed rule with a request for comments in the **Federal Register** on May 7, 2010 (75 FR 25161). Two respondents provided comments.

II. Discussion and Analysis of the Public Comments

A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows.

A. Prescribing a Noncommercial Clause for Technical Data Related to a Commercial Item

Comment: Two respondents described the prescriptions at DFARS 227.7102–3(b) and 227.7103–6(a) as new requirements that exceed the changes necessary to implement the statute.

Response: The operative elements of the clause prescription at DFARS 227.7102–3(b) were a part of the last major revision of Part 227 in 1995. The substance of the prescription has not changed in the proposed rule; the requirement was redesignated as DFARS 227.7102–(4)(b) and revised to cross-reference the prescription added to DFARS 227.7103–6(a). This follows DFARS drafting principles to use only a single prescription for each clause, using cross-references when necessary. As such, the prescription at DFARS 227.7103–6(a) serves as the primary source for prescribing all uses of the clause at DFARS 252.227–7013, with a cross-reference at 227.7102–(4)(b).

Comment: A respondent recommended that the criteria ''or will pay any portion of the development costs'' should be eliminated because the Government should not receive the benefit of something it may or may not pay for in the future outside of the contract.

Response: The ''will pay'' criterion has been used since 1995. The term ''will'' is used to denote an anticipated future action or result, and there is no evidence that this criterion has been or should be interpreted as seeking to be used in a contract when the criteria used to invoke the clause has not, and is not, expected to occur during the contract.

Comment: Two respondents outlined specific concerns that prescribing use of the noncommercial clause for technical data related to a commercial item is unnecessarily burdensome with regard to the noncommercial marking requirements. One respondent argued that this could result in the contractor unintentionally forfeiting its intellectual property rights by delivering with commercial markings that do not comply with the DFARS noncommercial marking requirements.

Response: The prescription for the use of the clause at DFARS 252.227–7013 in this scenario already exists. Use of commercial restrictive markings would not directly result in the forfeiture of the contractor's intellectual property rights in cases in which the noncommercial marking rules were used. The restrictive marking required by the clause at DFARS 252.227–7015(d) for technical data related to commercial items should be sufficient to: (1) Preserve the contractor's rights under the noncommercial clause procedures for correcting ''nonconforming'' markings (see DFARS 252.227–7013(h)(1)) or (2) validate asserted restrictions under DFARS 252.227–7037, which is used regardless of whether the clauses at DFARS 252.227–7013 or 252.227–7015 are included.

The final rule is amended to address concerns about the desirability of requiring noncommercial markings for the entire technical data package, in cases where the Government may have funded only a small portion of the development. The final rule revises the prescriptions at DFARS 227.7102–4(b) and 227.7103–6(a), to clarify that in cases when the Government ''will have paid'' for any portion of the development of a commercial item, both the commercial clause at DFARS 252.227–7015 and the noncommercial clause at DFARS 252.227–7013 should be used together. In these cases, the noncommercial clause will apply only to the technical data related to those portions of the commercial item that were developed in some part at Government expense, and the commercial clause will remain applicable to the rest of the data. This preserves the preexisting allocation of rights between the parties, but avoids the necessity of applying noncommercial markings to data related to commercial technologies that were developed exclusively at private expense. In addition, the flowdown requirements of DFARS clause 252.227–7013(k) and clause 252.227–7015(e) are clarified to enable the use of the appropriate clause(s) to lower-tier subcontracts.

Comment: Two respondents commented that the proposed revisions result in a commercial item losing its commercial item status. One of these respondents recommended the elimination of the ''developed exclusively at private expense'' component of the proposed revisions to the clause at DFARS 252.227–7019, to avoid the application of the noncommercial clauses to commercial technologies.

Response: The prescription for the use of the clause at DFARS 252.227–7013 does not affect the commercial status of an item that otherwise meets the definition of commercial item at FAR 2.101 (based on 41 U.S.C. 403(12), and 10 U.S.C. 2302(3)(I)). If the item still qualifies as a commercial item, then it is a commercial item. If that commercial item was not developed exclusively at private expense, then the rules apply that govern the treatment of technical data deliverables and associated license rights related to that commercial item.

Comment: Two respondents identified several ways in which the prescribed use of the clause at DFARS 252.227–7013, instead of 252.227–7015, appears to be inconsistent with FAR and DFARS policies regarding data deliverables and data rights in commercial technologies. The respondents noted that DFARS 227.7102–1 states DoD's basic policy that DoD shall acquire only the technical data deliverables that are customarily provided to the public, with a few exceptions.

Response: The prescription for the use of the clause at DFARS 252.227–7013, when the item has been developed in part at Government expense but the item still qualifies as commercial, does not change the applicability of this policy statement. The policy provides exceptions, one of which allows the Government to require the delivery of technical data that describes modifications made at Government expense even if such data is not typically provided to the public (see DFARS 227.7102–1(a)(3)).

Comment: A respondent recommended the elimination of the ''developed exclusively at private expense'' component of the proposed revisions to the clause at DFARS 252.227–7019, to avoid the application of the noncommercial clauses to commercial technologies.

Response: The respondent's basis for concern is unclear in view of the limited applicability of the clause at DFARS 252.227–7019 to only noncommercial computer software, and the proposed revisions address only the noncommercial aspects of the Major Systems Rule. Accordingly, the proposed revisions to the validation procedures for noncommercial computer software at DFARS 227.7203–13 and 252.227–7019 are retained in the final rule.

Comment: One respondent noted that DFARS 227.7202–1 states the basic policy governing commercial computer software and computer software documentation is that the Government acquires the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy the agency's needs.

Response: The proposed rule creates no issues or conflicts with this policy since there are no changes proposed for any DFARS coverage related to commercial computer software or documentation.

B. Applying Data Rights Clauses to Subcontracts for Commercial Items

Comment: Two respondents recommended that 10 U.S.C. 2320 and 10 U.S.C. 2321 not be removed from the list of statutes set forth in DFARS 212.504(a), which prohibits their application to subcontracts for commercial items. One respondent concluded that removing these statutes from the list appears to ''unilaterally overturn the express intent of Congress and the FAR Council'' and that the proposed rule did not explain the basis for the decision to remove the statutes from the list.

Response: The proposed rule explains the basis for this determination. The decision to remove these statutes from the list is based on the appropriate statutory determinations that doing so is in the best interest of the Government. The proposed revisions to DFARS 212.504(a) are retained in the final rule.

C. Application of Statutory Technical Data Rules to Computer Software

Comment: A respondent argued that the proposed rule should not make any changes to the validation procedures for computer software; in particular, the clause at DFARS 252.227–7019, ''Validation of Asserted Restrictions—Computer Software,'' should not be amended to include the proposed new paragraph (f) that implements the ''Major Systems Rule.'' In addition, a respondent contended that the decision to cover software was flawed because: (1) There is no statutory basis for the change and (2) not all rights determinations are ''black and white.''

Response: (1) Although 10 U.S.C. 2320 and 2321 apply only to technical data and not to computer software, it is longstanding DoD policy and practice to

apply the same or analogous requirements to computer software, whenever appropriate. Accordingly, the proposed rule implements revisions to the validation procedures for computer software only to the extent that those procedures are based on the technical data validation procedures that are affected by the statutory changes. The result is that it is only the Major Systems Rule that is adapted for application only to noncommercial computer software. (2) The new Major Systems Rule is applicable only to challenges of contractor assertions that development was exclusively at private expense. Thus, the proposed adaptation of the new Major Systems Rule to noncommercial software validation also is not applicable to assertions based on mixed funds, and does not in any way restrict the ability to segregate mixed-funding development into its privately-funded and Government-funded portions.

D. Two Separate Standards for Civilian and DoD Agencies

Comment: One respondent stated that the proposed rule creates two separate standards for civilian and DoD agencies in that ''the practical result could be that an item will be treated as commercial for purposes of intellectual property rights by civilian agencies, and as non-commercial by the agencies of DoD.''

Response: Without analyzing the required treatment under the FAR of a commercial item by a civilian agency when the Government has paid a portion of the development costs, the proposed rule has not changed the criteria for whether an item is a commercial item (*i.e.,* under the definition at FAR 2.101). Since 1995, DFARS 227.7102–3(b) has required the use of the noncommercial clause at 252.227–7013 in lieu of the commercial clause at 252.227–7015 if the Government will pay any portion of the development costs of the commercial item. Although the proposed revision of the DoD validation scheme to include a ''Commercial Rule'' and a ''Major Systems Rule'' may have no equivalent in the civilian validation scheme, DoD's process is driven by the changes to 10 U.S.C. 2321, for which there is no equivalent in the civilian agency statute (41 U.S.C. 253d). No revisions are necessary.

E. Administrative, Technical and Typographical Issues

Comment: A respondent identified a citation error, which seeks to remove and reserve 212.504 paragraphs (a)(v) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts and (a)(vi) 10 U.S.C. 2327, Reporting Requirements Regarding Dealings with Terrorist Countries, when it appears that the intent is to remove paragraphs (a)(iii) 10 U.S.C. 2320, Rights in Technical Data and (iv) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions.

Response: The respondent is correct. This change is reflected in the final rule.

Comment: A respondent recommended changing the cross-reference in the second sentence of DFARS 252.227–7037(c) from paragraph (b) to (b)(1) for further clarification.

Response: The respondent is correct. This change is reflected in the final rule.

F. Changes to Rule Resulting From the Public Comments

Changes made in the final rule based on the public comments received, include the following:

- Removed DFARS 212.504 paragraphs (a)(iii) 10 U.S.C. 2320, Rights in Technical Data, and (a)(iv) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions, instead of DFARS 212.504 paragraphs (a)(v) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts and (a)(vi) 10 U.S.C. 2327, Reporting Requirements Regarding Dealings with Terrorist Countries.
- Revised the prescriptions at DFARS 227.7102–4(b) and 227.7103–6(a) to clarify that in cases when the Government ''will have paid'' for any portion of the development of a commercial item, both the commercial clause at DFARS 252.227–7015 and the noncommercial clause at DFARS 252.227–7013 shall be used together.
- Revised 252.212–7001(b) to add 252.227–7013 and 252.227–7037 to be used, as applicable.
- Revised 252.212–7001(c) to add 252.227–7013, 252.227–7015 and 252.227–7037 to be flowed down to subcontractors, as applicable.
- Revised the clause flowdown requirements of DFARS 252.227–7013(k) and 252.227–7015(e) to enable the use of the appropriate clause(s) to lower tier subcontracts.
- Changed the cross reference in the second sentence of the clause at DFARS 252.227–7037(c) from paragraph (b) to (b)(1).
- Revised 252.244–7000 to add 252.227–7015 and 252.227–7037 to be flowed down to subcontractors, as applicable.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not have significant economic impact on a substantial number of small entities within the meaning for the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because major systems or subsystems are generally not developed by small businesses. The rule only applies in the limited circumstances that there is a challenge to a use or release restriction for a major system or subsystem that the contractor or subcontractor claims was developed exclusively at private expense.

V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 227, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 227, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 227, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.504 [Amended]

■ 2. Section 212.504 is amended as follows:

■ (a) By removing paragraphs (a)(iii) and (iv); and

■ (b) Redesignating paragraphs (a)(v) through (xix) as (a)(iii) through (xvii), respectively.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 3. Amend section 227.7102 by removing the text, and republishing the section heading to read as follows:

227.7102 Commercial items, components, or processes.

■ 4. Redesignate section 227.7102–3 as 227.7102–4.

■ 5. Add new section 227.7102–3 to read as follows:

227.7102–3 Government right to review, verify, challenge and validate asserted restrictions.

Follow the procedures at 227.7103–13 and the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, regarding the validation of asserted restrictions on technical data related to commercial items.

■ 6. Revise the newly redesignated section 227.7102–4 to read as follows:

227.7102–4 Contract clauses.

(a)(1) Except as provided in paragraph (b) of this subsection, use the clause at 252.227–7015, Technical Data–Commercial Items, in all solicitations and contracts when the Contractor will be required to deliver technical data pertaining to commercial items, components, or processes.

(2) Use the clause at 252.227–7015 with its Alternate I in contracts for the development or delivery of a vessel design or any useful article embodying a vessel design.

(b) In accordance with the clause prescription at 227.7103–6(a), use the clause at 252.227–7013, Rights in Technical Data–Noncommercial Items, in addition to the clause at 252.227–7015, if the Government will have paid for any portion of the development costs of a commercial item. The clause at 252.227–7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense.

(c) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in all solicitations and contracts for commercial items that include the clause at 252.227–7015 or the clause at 252.227–7013.

■ 6. Amend section 227.7103–6 to revise paragraph (a) to read as follows:

227.7103–6 Contract clauses.

(a) Use the clause at 252.227–7013, Rights in Technical Data–Noncommercial Items, in solicitations and contracts when the successful offeror(s) will be required to deliver to the Government technical data pertaining to noncommercial items, or pertaining to commercial items for which the Government will have paid for any portion of the development costs (in which case the clause at 252.227–7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense). Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial items developed exclusively at private expense (see 227.7102–4), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovation Research Program (see 227.7104). Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts.

* * * * *

■ 7. Amend section 227.7103–13 by:

■ (a) Redesignating paragraph (c) as paragraph (d);

■ (b) Adding a new paragraph (c); and

■ (c) Amending redesignated paragraph (d) by revising the introductory text and paragraphs (d)(2)(i) and (d)(4).

The additions and revisions read as follows.

227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.

* * * * *

(c) *Challenge considerations and presumption.*

(1) *Requirements to initiate a challenge.* Contracting officers shall have reasonable grounds to challenge the validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information pertaining to the assertion. The contracting officer shall not challenge a contractor's assertion that a commercial item, component, or process was developed exclusively at private expense unless the Government can demonstrate that it contributed to development of the item, component or process.

(2) *Presumption regarding development exclusively at private expense.* 10 U.S.C. 2320(b)(1) and 2321(f) establish a presumption and procedures regarding validation of asserted restrictions for technical data related to commercial items, and to major systems, on the basis of development exclusively at private expense.

(i) *Commercial items.* For commercially available off-the-shelf items (defined at 41 U.S.C. 431(c)[104]) in all cases, and for all other commercial items except as provided in paragraph (c)(2)(ii) of this subsection, contracting officers shall presume that the items were developed exclusively at private expense whether or not a contractor submits a justification in response to a challenge notice. When a challenge is warranted, a contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

(ii) *Major systems.* The presumption of development exclusively at private expense does not apply to major systems or subsystems or components thereof, except for commercially available off-the-shelf items (which are governed by paragraph (c)(2)(i) of this subsection). When the contracting officer challenges an asserted restriction regarding technical data for a major system or a subsystem or component thereof on the basis that the technology was not developed exclusively at private expense, the contracting officer shall sustain the challenge unless information provided by the contractor or subcontractor demonstrates that the item was developed exclusively at private expense.

(d) *Challenge and validation.* All challenges shall be made in accordance with the provisions of the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

* * * * *

(2) *Pre-challenge requests for information.*

(i) After consideration of the situations described in paragraph (d)(3) of this subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to ascertain the basis of the restrictive markings. Additional supporting documentation may be requested when the explanation provided by the person making the assertion does not, in the contracting officer's opinion, establish the validity of the assertion.

* * * * *

(4) *Challenge notice.* The contracting officer shall not issue a challenge notice unless there are reasonable grounds to question the validity of an assertion. The contracting officer may challenge

an assertion whether or not supporting documentation was requested under paragraph (d)(2) of this subsection. Challenge notices shall be in writing and issued to the contractor or, after consideration of the situations described in paragraph (d)(3) of this subsection, the person asserting the restriction. The challenge notice shall include the information in paragraph (e) of the clause at 252.227–7037.

* * * * *

■ 8. Amend section 227.7203–13 by:

■ (a) Redesignating paragraphs (d) through (f) as (e) through (g), respectively; and

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

227.7203–13 Government right to review, verify, challenge and validate asserted restrictions.

* * * * *

(d) *Major systems.* When the contracting officer challenges an asserted restriction regarding noncommercial computer software for a major system or a subsystem or component thereof on the basis that the computer software was not developed exclusively at private expense, the contracting officer shall sustain the challenge unless information provided by the contractor or subcontractor demonstrates that the computer software was developed exclusively at private expense.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 252.212–7001 by—

■ (a) Revising the introductory text;

■ (b) Amending the clause date by removing ''(AUG 2011)'' and adding in its place ''(SEP 2011)'';

■ (c) Redesignating paragraphs (b)(19) through (b)(28) as paragraphs (b)(20) through (b)(29);

■ (d) Adding new paragraph (b)(19);

■ (e) Amending newly redesignated paragraph (b)(20) by removing ''(MAR 2011)'' and adding in its place ''(SEP 2011)'';

■ (f) Amending newly redesignated paragraph (b)(21) by removing ''(SEP 1999)'' and adding in its place ''(SEP 2011), if applicable (see 227.7102–4(c)).'';

■ (g) Redesignating paragraphs (c)(2) through (c)(6) as paragraphs (c)(5) through (c)(9), respectively; and

■ (h) Adding new paragraphs (c)(2) through (c)(4).

The additions and revisions read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statues or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

As prescribed in 212.301(f)(iii) and 227.7103–6(a) and (e), use the following clauses as applicable:

* * * * *

(b) * * *

(19) 252.227–7013, Rights in Technical Data—Noncommercial Items (SEP 2011), if applicable (see 227.7103–6(a)).

* * * * *

(c) * * *

(2) 252.227–7013, Rights in Technical Data—Noncommercial Items (SEP 2011), if applicable (see 227.7103–6(a)).

(3) 252.227–7015, Technical Data—Commercial Items (SEP 2011), if applicable (see 227.7102–4(a)).

(4) 252.227–7037, Validation of Restrictive Markings on Technical Data (SEP 2011), if applicable (see 227.7102–4(c)).

* * * * *

■ 10. Amend section 252.227–7013 by—

■ (a) Amending the clause date by removing ''(MAR 2011)'' and adding in its place ''(SEP 2011)''; and

■ (b) Revising paragraph (k)(2) to read as follows:

252.227–7013 Rights in technical data–Noncommercial items.

* * * * *

(k) * * *

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

* * * * *

■ 11. Amend section 252.227–7015 by—

■ (a) Amending the clause date by removing ''(MAR 2011)'' and adding in its place ''(SEP 2011)''; and

■ (b) Adding new paragraph (e) to read as follows:

252.227–7015 Technical data–Commercial items.

* * * * *

(e) *Applicability to subcontractors or suppliers.*

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320 and 10 U.S.C. 2321.

(2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the clause at 252.227–7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

* * * * *

■ 12. Amend section 252.227–7019 by—

■ (a) Amending the clause date by removing ''(JUN 1995)'' and adding in its place ''(SEP 2011)'';

■ (b) Redesignating paragraphs (f) through (i) as paragraphs (g) through (j), respectively;

■ (c) Adding new paragraph (f);

■ (d) Revising the newly redesignated paragraph (g)(5);

■ (e) Amending the newly redesignated paragraph (h)(1) introductory text by removing ''(g)(3)'', and adding in its place ''(h)(3)''; and

■ (f) Amending the newly redesignated paragraph h)(3) by removing ''(g)(1)'', and adding in its place ''(h)(1)''.

The additions and revisions read as follows:

252.227–7019 Validation of asserted restrictions–Computer software.

* * * * *

(f) *Major systems.* When the Contracting Officer challenges an asserted restriction regarding noncommercial computer software for a major system or a subsystem or component thereof on the basis that the computer software was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the computer software was developed exclusively at private expense.

(g) * * *

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (g)(1) of this clause, the Contracting Officer will issue a final decision, in accordance with paragraph (f) of this clause and the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

* * * * *

■ 13. Amend 252.227–7037 by—

■ (a) Amending the introductory text by removing ''227.7102–3(c)'' and adding in its place ''227.7102–4(c)'';

■ (b) Amending the clause date by removing ''(SEP 1999)'' and adding in its place ''(SEP 2011)''; and

■ (c) Revising paragraphs (b), (c), (f), and (l) to read as follows:

252.227–7037 Validation of restrictive markings on technical data.

* * * * *

(b) *Presumption regarding development exclusively at private expense.*

(1) *Commercial items.* For commercially available off-the-shelf items (defined at 41 U.S.C. 104) in all cases, and for all other commercial items except as provided in paragraph (b)(2) of this clause, the Contracting Officer will presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Contracting Officer shall not challenge such assertions unless the Contracting Officer has information that demonstrates that the item, component, or process was not developed exclusively at private expense.

(2) *Major systems.* The presumption of development exclusively at private expense does not apply to major systems or subsystems or components thereof, except for commercially available off-the-shelf items (which are governed by paragraph (b)(1) of this clause). When the Contracting Officer challenges an asserted restriction regarding technical data for a major system or a subsystem or component thereof on the basis that the item, component, or process was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the item, component, or process was developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (b)(1) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

* * * * *

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with paragraph (b) of this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

* * * * *

(l) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data.

* * * * *

■ 14. Amend section 252.244–7000 by—

■ (a) Amending the clause date by removing ''(AUG 2011)'' and adding in its place ''(SEP 2011)'';

■ (b) Redesignating paragraphs (c) through (h) as (e) through (j), respectively; and

■ (c) Adding new paragraphs (c) and (d) as follows:

252.244–7000 Subcontracts for commercial items and commercial components (DoD contracts).

* * * * *

(c) 252.227–7015, Technical Data—Commercial Items (SEP 2011), if applicable (see 227.7102–4(a)).

(d) 252.227–7037, Validation of Restrictive Markings on Technical Data (SEP 2011), if applicable (see 227.7102–4(c)).

* * * * *

[FR Doc. 2011–23956 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 213

RIN 0750–AH07

Defense Federal Acquisition Regulation Supplement; Ships Bunkers Easy Acquisition (SEA) Card® and Aircraft Ground Services (DFARS Case 2009–D019)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement to allow the use of U.S. Government fuel cards in lieu of a Purchase Order-Invoice-Voucher for fuel, oil, and refueling-related items for purchases not exceeding the simplified acquisition threshold.

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 703–602–0289.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal register** at 76 FR 21849 on April 19, 2011, to add language to Defense Federal Acquisition Regulation Supplement (DFARS) 213.306(a)(1)(A) to include purchases of marine fuel, oil, and refueling-related items up to the simplified acquisition threshold using the Ships Bunkers Easy Acquisition (SEA) Card® in lieu of the SF 44, Purchase Order-Invoice-Voucher. Additionally, this section is revised to include additional ground refueling-related services when using the AIR Card®. These changes for use of the AIR Card® and SEA Card® will improve the refueling capability of aircraft and smaller vessels at non-contract locations. No public comments were received in response to the proposed rule.

II. Executive Order 12866 and Executive Order 13563

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. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

This is a final rule to revise the Defense Federal Acquisition Regulation Supplement (DFARS) at 213 to permit the use of U.S. Government fuel cards in lieu of an SF 44, Purchase Order-Invoice-Voucher, for fuel, oil, and refueling-related items for purchases not exceeding the simplified acquisition threshold. The objective of this rule is to amend DFARS 213.306(a)(1)(A) to (1) Permit the purchase of marine fuel using the Ships' bunkers Easy Acquisition (SEA) Card® in lieu of the SF44, Purchase Order-Invoice-Voucher, up to the simplified acquisition threshold and (2) provide additional ground refueling-related services when using the AIR Card®. The legal basis is 41 U.S.C. 1303 and 48 CFR chapter 1.

Purchases of aviation fuel are on-the-spot, over the counter transactions (''gas and go''), but generally exceed the micro-purchase threshold due to the price of aviation fuel and oil fuel tank capacities. Previously, the threshold for SF44/AIR Card® purchases of fuel and oil was set at the simplified acquisition threshold at DFARS 213.306(a)(1)(A)) under DFARS Case 2007–D017 (see final rule published at 72 FR 6484 on February 12, 2007).

The military services and the U.S. Coast Guard have small vessels that fulfill valid mission needs in direct support of national security. Unlike larger vessels, small vessels' movements and needs are often unpredictable. These small vessels must procure fuel away from their home stations, but because of their smaller size and unique mission requirements are unable to use the Defense Logistics Agency energy bunkers contracts available at major seaports. Due to port restrictions, bunkering merchants do not typically provide support to smaller vessels. Instead, these smaller vessels frequent non-contract merchants or ''marina-type merchants'' that otherwise serve civilian recreational watercraft and similar needs.

No public comments were received in response to the initial regulatory flexibility analysis.

Approximately 80% of ''marina-type merchants'' are considered small businesses. Marina-type merchants accepting the SEA Card® will pay a normal fee to the banking institution or processing center, similar to VISA charges these merchants incur from other credit card clients. In addition, merchants are expected to benefit from accelerated payments, since they will be paid by the banking institution in accordance with their merchant agreement. The rule facilitates open market purchases, benefits merchants by making it much easier for merchants to do business with the military and will not have a significant cost or administrative impact on contractors, subcontractors, or offerors.

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not have a significant effect beyond DoD's internal operating procedures, substituting the use of a fuel card (AIR Card® and SEA Card®) in lieu of the SF44, Purchase Order-Invoice-Voucher.

IV. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 213

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 213 is amended as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 213 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 213.306 is amended to revise paragraph (a)(1)(A) to read as follows:

213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) * * *

(A) *Fuel and oil.* U.S. Government fuel cards may be used in lieu of an SF 44 for fuel, oil, and authorized refueling-related items (see PGI 213.306 for procedures on use of fuel cards);

* * * * *

[FR Doc. 2011–23944 Filed 9–19–11; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

RIN 0750–AG82

Defense Federal Acquisition Regulations Supplement; Discussions Prior to Contract Award (DFARS Case 2010–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to strongly encourage discussions prior to award for source selections of procurements estimated at $100 million or more.

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, telephone 703–602–0289.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule at 75 FR 71647 on November 24, 2010, to implement the recommendation of the DoD Source Selection Joint Analysis Team (JAT) to strongly encourage the use of discussions in all competitive negotiated procurements over $100 million. The period for public comment closed on January 24, 2011, and three respondents provided comments.

The rule proposed to amend DFARS part 215 to strongly recommend, for acquisitions of more than $100 million, that contracting officers hold discussions rather than use the authority at FAR 52.215–1 to award on initial offers without discussions.

II. Discussion and Analysis

A. Proposed rule is excessive

Comment: One respondent said that the proposed rule is ''overkill.''

Response: No change was made in the final rule in response to this comment. The JAT advises that data shows that the number of protests filed against the award of competitive negotiated contracts and orders over $100 million is substantially higher when discussions are not held. A preference for holding

discussions is recognition of a best practice.

B. Negative effects possible

Comment: One respondent wrote that requiring discussions could have negative effects, such as added Government and industry cost due to the significant increase in the source selection schedule and reduced solicitation and proposal quality due to a mindset that problems can be fixed during discussions.

Response: The JAT data demonstrates that procurement lead time is significantly extended when protests occurred. The second concern raised by the respondent, that proposals will be of lower quality, is unrealistic because the offeror that chooses to submit an inferior proposal always runs the risk of not making the competitive range and therefore not being considered for award.

C. Change reference

Comment: A respondent wanted to change the reference from 215.203–71 to 215.306(d) because the latter deals with discussions, which are covered at FAR 15.306(d).

Response: DoD agrees with the recommendation. The statement about holding discussions for actions of $100 million or more is relocated in the final rule to DFARS subpart 215.306(c) from 215.2.

D. Remove ''competitive range'' limitation

Comment: A respondent proposed deleting the phrase ''with offerors in the competitive range'' at the end of the sentence ''(F)or source selections when the procurement is $100 million or more, contracting officers should conduct discussions with offerors in the competitive range.'' The respondent noted that FAR 15.306(c)(1) and (d), read together, require the conduct of discussions with all offerors in the competitive range in every case.

Response: DoD agrees with respondent that the FAR already mandates discussions with all offerors whose proposals have been selected for the competitive range. The intent of this rule is to expand the situations in which discussions are held beyond those situations where they may be already mandated. The language in the proposed rule at DFARS 215.203–71 is relocated to 215.306(c)(1) in the final rule and revised to state ''For source selections, when the procurement is $100 million or more, contracting officers should conduct discussions. Follow the procedures at FAR 15.306(c) and (d).''

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the final rule does not add to or delete existing regulations on discussions for DoD procurements under $100 million, the majority of DoD procurements. For procurements of at least $100 million, any increase in discussions is anticipated to benefit all offerors, including small businesses, by providing them an opportunity to explain details of the offer and address their particular capabilities.

A final regulatory flexibility analysis was performed and is summarized as follows. This rule was initiated at the request of the Director, Defense Procurement and Acquisition Policy, to implement a recommendation of the Department of Defense (DoD) Source Selection Joint Analysis Team (JAT). The JAT, which was tasked to revise the DoD Source Selection Procedures, determined that there is a significant positive correlation between high-dollar source selections conducted without discussions and the number of protests sustained. In order to improve the quality of high-dollar, complex source selections, and reduce turbulence and inefficiency resulting from sustained protests, the policy is changed to strongly encourage discussions prior to the award of source selections estimated at $100 million or more.

DoD research has indicated that meaningful discussions with industry prior to contract award on high-dollar, complex requirements improves both industry's understanding of solicitation requirements and the Government's understanding of industry issues. By identifying and discussing these issues prior to submission of final proposals, the Government is often able to issue clarifying language. The modified requirements documentation allows industry to tailor proposals and better describe the offeror's intended approach, increases the probability that the offeror's proposal satisfies the Government requirements, and often results in better contract performance. Asking contracting officers to conduct discussions with industry provides a reasonable approach to recognizing and addressing valid industry concerns and a constructive alternative to protests resulting from industry frustration over misunderstood requirements. The legal basis is 41 U.S.C. 1303 and 48 CFR chapter 1.

Data were reviewed for the most recent year available, Fiscal Year 2009. While there is no data source available that tabulates the number of offers received from small businesses, DoD determined that 620 new contracts and 252 new task orders or delivery orders of $100 million or more were awarded to small businesses during Fiscal Year 2009. Therefore, DoD estimates that at least 872 small businesses could benefit from this policy change.

There is no reporting, recordkeeping, or other compliance requirement associated with the proposed rule. Therefore, there is no impact, positive or negative, on small businesses in this area. Thus, there are no additional professional skills necessary on the part of small businesses in this area. There are no direct costs to small business firms to comply with this rule. Conversely, small businesses that might have previously filed a protest against an award when discussions were not held may now be able to avoid the costs associated with protesting.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the proposed rule. When a solicitation includes the provision at FAR 52.215–1, Instructions to Offerors—Competitive Acquisitions, paragraph (f)(4) of the clause states that the ''Government intends to evaluate proposals and award a contract without discussions.'' If, however, the solicitation includes FAR 52.215–1 with its Alternate I, then the revised paragraph (f)(4) states that the ''Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range.'' Use of the clause without Alternate I will not accomplish the stated objectives;

only the clause with its Alternate I will accomplish the purpose of this case.

No comments were received from small entities on this rule.

V. Paperwork Reduction Act.

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 215

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 215.209 is added as follows:

215.209 Solicitation provisions and contract clauses.

(a) For source selections when the procurement is $100 million or more, contracting officers should use the provision at FAR 52.215–1, Instructions to Offerors—Competitive Acquisition, with its Alternate I.

■ 3. Section 215.306 is added as follows:

215.306 Exchanges with offerors after receipt of proposals.

(c) *Competitive range.*

(1) For acquisitions with an estimated value of $100 million or more, contracting officers should conduct discussions. Follow the procedures at FAR 15.306(c) and (d).

[FR Doc. 2011–23949 Filed 9–19–11; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217 and 241

RIN 0750–AG89

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting (DFARS Case 2009–D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update and clarify the requirements for multiyear contracting.

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, telephone (703) 602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

This DFARS case was initiated by DoD to perform a comprehensive review of DFARS subpart 217.1, Multiyear Contracting. On March 2, 2011, the DoD published a proposed rule to update and clarify the requirements relating to multiyear contracting. This final rule reorganizes and updates existing coverage for multiyear acquisitions.

A minor editorial change was made to the final rule at DFARS 217.170 to remove the redundant introductory sentence that had been proposed at 217.170(a) and to revert to the original paragraph numbering of this section. At DFARS 217.172(f)(1), the references to 217.172(g)(4) and (5) were corrected to refer to 217.172(g)(3) and (4). Coverage at 217.175 was renumbered to 217.174 to follow in sequence, and this required a reference citation change at 241.103. No changes to existing DoD policy, including implementation of any statutorily mandated acquisition-related thresholds, are being made in this rule.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not change the existing requirements of subpart 217.1. Furthermore, these requirements are primarily internal procedures for DoD. No comments were received from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610.

IV. Paperwork Reduction Act

This rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 217 and 241:

Government procurement.

Mary Overstreet

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217 and 241 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217 and 241 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.170 is amended by—

■ a. Amending paragraph (a), by removing ''Section'' and adding in its place ''section'' and removing ''Public Law 105–56'' and adding in its place ''Pub. L. 105–56,'';

■ b. Amending paragraph (b), by removing ''217.172(f)(2)'' and adding in its place ''217.172(g)(2)'';

■ c. Amending paragraph (c) by removing ''Section'' and adding in its place ''section'' and removing ''Public Law 105–56'' and adding in its place ''Pub. L. 105–56,'';

■ d. Amending paragraph (c) by removing in the listing of references '';'' in two places and adding in its place '',''; and

■ e. Revising paragraph (e) to read as follows:

217.170 General.

* * * * *

(e)(1) DoD must provide notification to the congressional defense committees at least 30 days before entering into a multiyear contract for certain procurements, including those expected to—

(i) Employ an unfunded contingent liability in excess of $20 million (see 10 U.S.C. 2306b(l)(1)(B)(i)(II), 10 U.S.C. 2306c(d)(1), and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts);

(ii) Employ economic order quantity procurement in excess of $20 million in any one year of the contract (10 U.S.C. 2306b(l)(1)(B)(i)(I));

(iii) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year (see 10 U.S.C. 306b(l)(1)(B)(ii) and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of $100 million (see 10 U.S.C. 2306c(d)(4), 10 U.S.C. 2306b(g), and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts).

(2) A DoD component must submit a request for authority to enter into a multiyear contract described in paragraphs (e)(1)(i) through (iv) of this section as part of the component's budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President's budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (section 8008(b) of Pub. L. 105–56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (e)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees (see section 8008(b) of Pub. L. 105–56).

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (e)(1) of this section. The head of the agency must submit a copy of each notice to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

(5) If the budget for a contract that contains a cancellation ceiling in excess of $100 million does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(i) The notification required by paragraph (e)(1) of this section shall include—

(A) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(B) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) A financial risk assessment of not including budgeting for costs of contract cancellation (10 U.S.C. 2306b(g) and 10 U.S.C. 2306c(d)); and

(ii) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

■ 3. Amend section 217.171 by—

■ (a) Removing paragraphs (a)(4) through (a)(6) and paragraph (b);

■ (c) Redesignating paragraphs (a)(2), (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) as paragraphs (b), (b)(1), (b)(2), and (b)(3), respectively;

■ (d) Redesignating paragraphs (a)(3), (a)(3)(i), (a)(3)(ii), (a)(3)(ii)(A), (a)(3)(ii)(B) and (a)(3)(iii) as paragraphs (c), (c)(1), (c)(2), (C)(2)(i), (c)(2)(ii) and (c)(3), respectively; and

■ (f) Revising paragraph (a) as set forth below. The revision reads as follows:

217.171 Multiyear contracts for services.

(a) The head of the agency may enter into a multiyear contract for a period of not more than 5 years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated (10 U.S.C. 2306c). Covered services are—

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high-quality instructor skills (*e.g.,* training for pilots and aircrew members or foreign language training);

(4) Base services (*e.g.,* ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal); and

(5) Environmental remediation services for—

(i) An active military installation;

(ii) A military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or

(iii) A site formerly used by DoD.

* * * * *

■ 4. Section 217.172 is revised to read as follows:

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law (10 U.S.C. 2306b).

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105–1(b), the use of such a contract will promote the national security of the United States (10 U.S.C. 2306b(a)(6)).

(c) Multiyear contracts in amounts exceeding $500 million must be specifically authorized by law (10 U.S.C. 2306b and 10 U.S.C. 2306c). A multiyear supply contract may be authorized by an appropriations act or a law other than an appropriations act (10 U.S.C. 2306b(i)(3) and (l)(3)).

(d) The head of the agency shall not enter into a multiyear contract unless—

(1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract; and

(2) In the case of a contract for procurement of aircraft, the budget request includes full funding of procurement funds for production beyond advance procurement activities of aircraft units to be produced in the fiscal year covered by the budget.

(e)(1) The head of the agency must not enter into or extend a multiyear contract that exceeds $500 million (when entered into or extended until the Secretary of Defense identifies the contract and any extension in a report submitted to the congressional defense committees (10 U.S.C. 2306b(1)(5)).

(2) In addition, for contracts equal to or greater than $500 million, the head of the contracting activity must determine that the conditions required by paragraph (g)(2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary's certification and determination required by paragraph (g)(2) of this section (10 U.S.C. 2306b(a)(1)(7)).

(f) The head of the agency may enter into a multiyear contract for—

(1) A weapon system and associated items, services, and logistics support for a weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.172(g)(3) and (4) regarding economic order quantity procurements). Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (*e.g.,* the full funding policy in Volume 2A, chapter 1, of DoD 7000.14–R, Financial Management Regulation).

(g) The head of the agency shall ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (b) of this section:

(1) The multiyear exhibits required by DoD 7000.14–R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress in writing, by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contracts, that each of the conditions in paragraphs (g)(2)(i) through (vii) of this section is are satisfied (10 U.S.C. 2306b(i)(1)(A) through (G)).

(i) The Secretary has determined that each of the requirements in FAR 17.105, paragraphs (b)(1) through (5) will be met by such contract and has provided the basis for such determination to the congressional defense committees (10 U.S.C. 2306b(i)(1)(A)).

(ii) The Secretary's determination under paragraph (g)(2)(i) of this section was made after the completion of a cost analysis performed by the Defense Cost and Resource Center of the Department of Defense and such analysis supports the findings (10 U.S.C. 2306b(i)(1)(B)).

(iii) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to 10 USC 2433(d) within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded (10 U.S.C. 2306b(i)(1)(C)).

(iv) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic (10 U.S.C. 2306b(i)(1)(D)).

(v) Sufficient funds will be available in the fiscal year in which the contract is to be awarded to perform the contract, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation (10 U.S.C. 2306b(i)(1)(E)).

(vi) The contract is a fixed price type contract (10 U.S.C. 2306b(i)(1)(F)).

(vii) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities. The head of the agency shall submit to USD(C)(P/B) information supporting the agency's determination that this requirement has been met (10 U.S.C. 2306b(i)(1)(G)).

(viii) The head of the agency shall submit information supporting this certification to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(A) The head of the agency shall, as part of this certification, give written notification to the congressional defense committees of—

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including the budgeting for costs of contract cancellation (10 U.S.C. 2306b(g)); and

(B) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

(3) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(4) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(B)).

(5) The Secretary may make the certification under paragraph (g)(2) of this section notwithstanding the fact that one or more of the conditions of such certification are not met if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification (10 U.S.C. 2306b(i)(5)).

(6) The Secretary of Defense may not delegate this authority to make the certification under paragraph (g)(2) of this section or the determination under paragraph (g)(5) of this section to an official below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics (10 U.S.C. 2306b(i)(6)).

(7) The Secretary of Defense shall send a notification containing the findings of the agency head under FAR 17.105–1(b), and the basis for such findings, 30 days prior to the award of a multiyear contract or a defense acquisition program that has been specifically authorized by law to the congressional defense committees (10 U.S.C. 2306b(i)(7)).

(8) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD(AT&L)DPAP for transmission to Congress via the Secretary of Defense and the President.

(h) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

■ 5. Section 217.173 is revised to read as follows:

217.173 Multiyear contracts for military family housing.

The head of the agency may enter into multiyear contracts for periods up to 4 years for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year (10 U.S.C. 2829).

217.174 [Removed]

■ 6. Section 217.174 is removed.

■ 7. Section 217.175 is redesignated as 217.174 and the newly redesignated section 217.174 paragraph (b) is revised as set forth below.

217.174 Multiyear contracts for electricity from renewable energy sources.

* * * * *

(b) *Limitations.* The head of the contracting activity may exercise the authority in paragraph (a) of this section to enter into a contract for a period in

excess of 5 years only if the head of the contracting activity determines, on the basis of a business case analysis (see PGI 217.174 for a business case analysis template and guidance) prepared by the requiring activity, that—

(1) The proposed purchase of electricity under such contract is cost effective; and

(2) It would not be possible to purchase electricity from the source in an economical manner without the use of a contract for a period in excess of 5 years.

* * * * *

PART 241—ACQUISITION OF UTILITY SERVICES

■ 8. Section 241.103 paragraph (2) is revised to read as follows:

241.103 Statutory and delegated authority.

* * * * *

(2) See 217.174 for authority to enter into multiyear contracts for electricity from renewable energy sources.

* * * * *

[FR Doc. 2011–23963 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 236

RIN 0750–AG91

Defense Federal Acquisition Regulation Supplement; Construction and Architect-Engineer Services Performance Evaluation (DFARS Case 2010–D024)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement to use DoD-unique forms to prepare contractor performance evaluations for construction and architect-engineer services.

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, telephone, (703) 602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

This rule removes the requirement to use DoD-unique forms to document contractor past performance for construction and Architect-Engineer services. On April 19, 2011, DoD published a proposed rule in the **Federal Register** at 75 FR 21851 to delete outdated procedures and references to obsolete DD forms. No public comments were received in response to the proposed rule.

One editorial change is being made to the final rule. The references to ''A–E'' are revised to read ''architect-engineer'' in sections 236.102, 236.602–70, 236.606–70, and in 236.609–70.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows.

DoD is amending the DFARS to reflect the current automated process being used by and delete outdated procedures and references to obsolete DD forms. The objective of this rule is to remove the requirement to use DD Form 2626, Performance Evaluation (Construction), and DD Form 2631, Performance Evaluation (Architect-Engineer), to evaluate contractor performance.

The Contractor Performance Assessment Report System (CPARS) is now the Governmentwide system for electronically collecting past performance data; there is no need to specify separate DoD forms to collect the data. Accordingly, this rule removes the requirement to use DD forms 2626 and 2631 from the DFARS.

On April 19, 2011, DoD published a proposed rule at 75 FR 21851. The period for public comments closed on June 20, 2011. DoD made no changes to the proposed rule because public comments were not received in response to the initial regulatory flexibility analysis.

There are no reporting, recordkeeping, or other compliance requirements associated with this rule. Thus, there are no professional skills necessary on the part of small businesses. In a like manner, there are no direct costs to small entities to comply with this rule other than the cost of internet access should small entities choose to comment on their past performance evaluation entered into CPARS by Government personnel.

There are no known relevant Federal rules that may duplicate, overlap or conflict with this rule. Instead, the rule aligns the DFARS to the Federal Acquisition Regulation (FAR) ensuring that agencies submit past performance reports electronically per FAR 42.15 eliminating the need for paper reports.

No mitigation steps were taken, since the rule does not have a significant adverse economic impact on small entities.

IV. Paperwork Reduction Act

This rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of subjects in 48 CFR Part 236

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 236 is amended as follows:

PART 236—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

■ 1. The authority citation for 48 CFR part 236 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

236.102 [Amended]

■ 2. Amend section 236.102 by—

■ (a) Removing paragraph designations (1) through (4);

■ (b) Redesignating paragraphs (i) and (ii) in the definitions of ''Construction activity'' as paragraphs (1) and (2); and

■ (c) Removing the definition of ''A–E''.

236.201 [Removed]

■ 3. Section 236.201 is removed.

236.602–70 [Amended]

■ 4. Amend section 236.602–70 by removing ''A–E'' and adding in its place ''architect-engineer''.

■ 5. Revise section 236.604 to read as follows:

236.604 Performance evaluation.

Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the architect-engineer contractor's performance.

236.606–70 Statutory fee limitation. [Amended]

■ 6. Amend section 236.606–70(a) to remove ''A–E'' and add in its place ''architect-engineer''.

236.609–70 [Amended]

■ 7. Amend section 236.609–70 as follows—

■ (a) In paragraph (a)(1) introductory text remove ''A–E'' and add in its place ''architect-engineer''.

■ (b) In paragraph (a)(1)(ii) remove ''A–E'' and add in its place ''architect-engineer contractor''.

■ (c) In paragraph (b) introductory text remove ''A–E'' and add in its place ''architect-engineer''.

[FR Doc. 2011–23952 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA710

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 C season allowance of the 2011 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 17, 2011, through 1200 hrs, A.l.t., October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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 C season allowance of the 2011 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 8,729 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 123 mt to reflect the total amount of pollock TAC that has been caught prior to the C season in Statistical Area 610. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 610 is 8,606 mt (8,729 mt minus 123 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2011 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 8,506 mt, and is setting aside the remaining 100 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 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 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 September 14, 2011.

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: September 15, 2011.

Steven Thur,

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

[FR Doc. 2011–24104 Filed 9–15–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 182
Tuesday, September 20, 2011

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 416, 417, and 430

[Docket No. FSIS–2010–0023]

Shiga Toxin-Producing *Escherichia coli* in Certain Raw Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final determination and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) intends to carry out verification procedures, including sampling and testing manufacturing trim and other raw ground beef product components, to ensure control of both *Escherichia coli* O157:H7 (*E. coli* O157:H7) and six other serogroups of Shiga toxin-producing *E. coli* (STEC) (O26, O45, O103, O111, O121, and O145). The Agency intends to implement sampling and testing for the additional STEC. FSIS has determined that they, as well as O157:H7, are adulterants of non-intact raw beef products and product components within the meaning of the Federal Meat Inspection Act (FMIA). The Agency is publishing guidance for use in validating commercial pathogen detection test kits that may be capable of detecting the STEC of concern. Finally, the Agency is planning a comprehensive survey of its field personnel who are stationed in beef slaughtering and processing establishments, similar to the 2007 ''checklist'' survey, to determine the processing practices that are employed to reduce the likelihood of contamination of intact and non-intact beef products with these STEC.

DATES: To receive full consideration, comments should be received by November 21, 2011.

FSIS intends to implement routine testing for the six additional STEC discussed in this document beginning March 5, 2012, following its comment period. To allow industry time to implement possible changes to food safety systems, FSIS will generally not regard raw, non-intact beef products or the components of such products found to have these pathogens as adulterated until it begins this routine testing. FSIS will affirm, in an additional **Federal Register** notice, the date that it plans to implement sampling and testing.

ADDRESSES: FSIS invites interested persons to submit comments on this document. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Docket Clearance Unit, 8–164, Patriots Plaza III, 355 E Street, SW., Washington, DC 20024–3221.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0023. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Table of Contents

Background

I. Shiga Toxin-Producing E. coli: E. coli O157:H7

While most strains of common intestinal bacteria of the *E. coli* species are harmless, and are not adulterants of raw meat, some strains are highly pathogenic. The Shiga toxin-producing *E. coli* (STEC) may cause illnesses of varying severity, from diarrhea (often bloody) and abdominal cramps to, rarely, kidney disorders. Shiga toxin is the same toxin as is produced by *Shigella,* the bacteria that cause dysentery. In some instances, the toxin will bind to tissues in the kidneys and cause hemolytic uremic syndrome (HUS), leading to kidney failure and death. STEC also may cause asymptomatic infections and extraintestinal infections.[1]

Since the 1990s, FSIS has considered a particular strain of STEC, *E. coli* O157:H7, to be an adulterant of raw, non-intact beef products and the raw intact components used to manufacture these products. On September 28, 1994, in a speech to the American Meat Institute, then-FSIS Administrator Michael R. Taylor stated, ''To clarify an important legal point, we consider raw ground beef that is contaminated with *E. coli* O157:H7 to be adulterated within the meaning of the [FMIA]. We are prepared to use the Act's enforcement tools, as necessary, to exclude adulterated product from commerce.

[1] U.S. Centers for Disease Control and Prevention. 2005. Shiga toxin-producing Escherichia coli (STEC). National Notifiable Diseases Surveillance System (NNDSS), 2005 Case Definition. *http://www.cdc.gov/ncphi/disss/nndss/casedef/shiga_current.htm,* accessed September 11, 2010.

* * * We plan to conduct targeted sampling and testing of raw ground beef at plants and in the marketplace for possible contamination.'' Mr. Taylor further stated, ''We know that the ultimate solution to the (*E. coli*) O157:H7 problem lies not in comprehensive end-product testing but rather in the development and implementation of science-based preventive controls, with product testing to verify process control.'' [2]

FSIS currently conducts verification procedures, including testing of ground beef products, beef manufacturing trimmings, and other raw ground beef product components for the presence of *E. coli* O157:H7. This pathogen can cause bloody diarrhea and other serious infections, particularly in vulnerable persons—the very young, the immunocompromised, and the elderly. Very few cells of *E. coli* O157:H7 are necessary to cause illness. While residing on the exterior surfaces of contaminated carcasses and primal and subprimal cuts of meat, the organisms can also contaminate the interior of ground product or other beef products—such as needle-tenderized or vacuum-tumbled product—when the protective surfaces of these products have been penetrated. If these products do not undergo rigorous heat treatment or other effective processing, the organisms can survive to cause human illness.

FSIS issued a policy statement (64 FR 2803; Jan. 19, 1999) that stated, ''* * * [g]iven the low infectious dose of [*E. coli* O157:H7] associated with foodborne disease outbreaks and the very severe consequences of an [*E. coli* O157:H7] infection, the Agency believes that the status under the FMIA of beef products contaminated with [*E. coli* O157:H7] must depend on whether there is adequate assurance that subsequent handling of the product will result in food that is not contaminated when consumed.'' FSIS stated that, with the exception of intact cuts of muscle that are to be distributed for consumption as intact cuts, an *E. coli* O157:H7-contaminated beef product must not be distributed until it has been processed into a ready-to-eat product, *i.e.,* a food that can be consumed safely without further cooking or other preparation. FSIS therefore deemed adulterated *E. coli* O157:H7-contaminated non-intact products and intact cuts that are to be further processed into non-intact products before being distributed for consumption.

In October 2002, FSIS published a rule (67 FR 62325; Oct. 7, 2002) requiring all manufacturers of beef products to reassess their HACCP plans relating to *E. coli* O157:H7 because the prevalence of the pathogen on cattle brought to slaughter was higher than expected.[3] FSIS issued compliance guidance for establishments on controlling *E. coli* O157:H7.

The beef industry held a summit in January 2003 to develop a unified plan and ''best practices'' for *E. coli* O157:H7 reduction. The industry introduced several mitigation techniques to reduce the prevalence of *E. coli* O157:H7 from the slaughterhouse to the grinding establishment. Recommended preventive measures included testing the hides and pre-eviscerated carcasses of cattle in order to benchmark whether and how the sanitary dressing procedures and antimicrobial interventions are effective in reducing bacterial contamination, targeting research on the development of effective interventions and implementing robust microbiological testing schemes. For the production of ground products, the recommendations included stopping the practice of carrying over product from one production day to the next, a practice that had resulted in a major recall of ground beef. The industry continues to use many of these techniques in controlling *E. coli* O157:H7 and has been focusing increasingly on risk reduction from the farm to the table.

II. Non-O157 STEC

As mentioned above, *E. coli* O157:H7 is not the only STEC that can enter the meat supply and cause illness.[4] FSIS is aware that other STEC serogroups may be present in cattle, and can contaminate beef and other meat products and that consumption of products containing certain pathogenic STEC can produce a range of symptoms from mild, non-bloody diarrhea to HUS and death, primarily in very young, elderly, or immunocompromised individuals.

The most prevalent pathogenic non-O157 STEC serogroups in the United States are O26, O45, O103, O111, O121, and O145.[5] While more than 50 STEC serogroups have been associated with human illness, U.S. Centers for Disease Control and Prevention (CDC) data shows that over 70 to 83 percent of confirmed, serogrouped non-O157 STEC illnesses are caused by these six STEC serogroups.[6] All of these non-O157 STEC strains can cause hemorrhagic colitis and all except O45 have been shown to cause hemolytic uremic syndrome.[7] We note that the illnesses associated with these strains have not primarily been due to contamination on beef.

Though limited data are available on dose response, there is evidence that the infectious doses of these non-O157 STEC are relatively low. For example, an investigation of an outbreak of STEC O26 from fermented beef sausage in Denmark yielded an infectious dose of 100 cells.[8] From an outbreak of O111 STEC in beef sausage in Australia, investigators extrapolated a dose range of 1 to 10 organisms, given as few as 1 cell per 10 g of sausage.[9] Using the concentrations of STEC O145 in contaminated ice cream in an outbreak in Belgium, the estimated infective dose was 400 CFU.[10] This is comparable to illness from *E. coli* O157:H7, which can result from infection with as few as 10 cells.[11] Although some of these outbreaks were attributable to contamination of products other than those the Agency regulates, the information from them shows how virulent these pathogenic STEC can be.

[2] Michael R. Taylor, FSIS Administrator. September 29, 1994. ''Change and Opportunity to Improve the Safety of the Food Supply. Speech to American Meat Institute Annual Convention, San Francisco, CA.

[3] U.S. Department of Agriculture. Food Safety and Inspection Service. *E. coli* 0157:H7 Contamination of Beef Products. Oct. 7, 2002. 67 FR 62325.

[4] There are approximately 300 to 400 known STEC serotypes that carry various Stx alleles and many of these serotypes and some of the Stx alleles have not been implicated in illness. These various STEC serotypes can be found in soil, water, and other foods and have even been reported to be present in the intestinal tracts of healthy humans. However, very few of the 300–400 non-O157 STEC have been conclusively identified as having caused illness due to being in the U.S. meat supply.

[5] Brooks, J.T., and E.G. Sewers, J.G. Wells, K.D. Greene, P.M. Griffin, R. M. Hoekstra, and N.A. Strockbine. 2005. Non-O157 Shiga Toxin-Producing *Escherichia coli* Infections in the United States, 1983–2002. JID 2005:192 (October 15) 1422–1429.

[6] Centers for Disease Control and Prevention. Bacterial Foodborne and Diarrheal Disease National Case Surveillance Annual Reports, 2003–2006. Available at *http://www.cdc.gov/nationalsurveillance/case_surveillance.html.*

[7] See Table 2 of the DRAFT Risk Profile for Pathogenic Non-O157 Shiga Toxin-Producing *Escherichia coli* later in this document.

[8] Boel, J., *et al.* 2009.

[9] Paton AW, Ratcliff RM, Doyle RM, Seymour-Murray J, Davos D, Lanser JA, and Paton JC. 1996. Molecular microbiological investigation of an outbreak of hemolytic-uremic syndrome caused by dry fermented sausage contaminated with Shiga-like toxin-producing Escherichia coli. J Clin Microbiol. 34(7):1622–7.

[10] Buvens G, Possé B, De Schrijver K, De Zutter L, Piérard D, Lauwers S, and Pierard D. 2011. Virulence Profiling and Quantification of Verocytotoxin-Producing Escherichia coli O145:H28 and O26:H11 Isolated During an Ice Cream-Related Hemolytic Uremic Syndrome Outbreak. Foodborne Pathog Dis. 8(3):1–6.

[11] Tilden J. Jr, Young W., McNamara A.M., Custer, C., Boesel, B., Lambert-Fair, M.A., Majkowski, J., Vugia, D., Werner, S.B., Hollingsworth, J., and Morris, J.G. Jr. 1996. A new route of transmission for *Escherichia coli:* infection from dry fermented salami. Am J Public Health. 86(8):1142–5.

There is also evidence that the thermal resistance of these strains is high enough that they can survive ordinary cooking of ground beef products. A recent study examining thermal resistance of STEC-inoculated non-intact beef revealed that *E. coli* O157:H7 and non-O157 STEC (a pooled composite of STEC serogroups O45, O103, O111, O121, and O145) had similar thermal inactivation profiles (Luchansky, unpublished data).[12] The recent outbreak in which ground beef was implicated as the vehicle of infection and other evidence shows that STEC O26 survives typical cooking.[13]

Illnesses from person-to-person transmission of STEC serogroups O26, O45, O103, O111, O121, and O145 have been documented, particularly in daycare settings and nursing homes, where there is close contact between persons with immature or compromised immune systems and/or underdeveloped personal hygiene skills. This occurs when an infected, sometimes asymptomatic, person sheds bacteria in feces and subsequent contamination of food or fomites occurs. STEC serogroups O26, O45, O103, O111, O121, and O145 have been isolated from beef carcasses or retail beef in the U.S. [14] [15] [16]

With full consideration of the information described above, FSIS has determined that raw, non-intact beef products that are contaminated with these STEC O26, O45, O103, O111, O121, and O145, are adulterated within the meaning of 21 U.S.C. 601(m)(1). Raw, non-intact beef products that are contaminated with these pathogens are also unhealthful and unwholesome (under 21 U.S.C. 601(m)(3)). FSIS also considers adulterated intact cuts that are contaminated with these serogroups if they are to be further processed into raw, non-intact products before being distributed for consumption.

FSIS has developed a laboratory methodology for detection and isolation of these serogroups from beef, thereby allowing development of an enforceable policy program targeted to control STECs O26, O45, O103, O111, O121, and O145. FSIS will verify establishment controls for these pathogens and will collect product samples in support of its verification efforts as well as to inform the Agency's regulatory program with regard to the pathogens. Establishments that manufacture raw, non-intact beef products or intact raw beef components of those products will be expected to evaluate whether these non-O157 STEC are hazards reasonably likely to occur in their products. FSIS will generally not regard raw, non-intact beef products or the components of such products found to have these pathogens as adulterated until FSIS implements a routine sampling program that will include, besides *E. coli* O157:H7, six additional STEC serogroups (O26, O45, O103, O111, O121, and O145). However, if product is associated with an STEC outbreak before that time, such product will be subject to recall, consistent with current FSIS practice.

III. Stakeholder Input

On October 17, 2007, FSIS, the Food and Drug Administration's Center for Food Safety and Applied Nutrition (FDA, CFSAN), and the CDC held a public meeting to solicit input from industry, consumers, academia, and other public health and regulatory agencies on the issue of whether some non-O157 STEC should be considered adulterants (72 FR 57285).[17] At the public meeting, FSIS indicated that the Agency was considering non-O157 STEC to be adulterants but also discussed the need to conduct further research to address the issues associated with these microorganisms. At the meeting, FSIS also acknowledged the need to develop the laboratory capacity to support policy decisions with respect to non-O157 STEC. The Agency requested public input on these issues.

Petition To Declare All Enterohemorrhagic STEC To Be Adulterants

On October 5, 2009, Marler Clark, LLP, PS, and other parties petitioned FSIS to issue an interpretive rule declaring all enterohemorrhagic STEC to be adulterants within the meaning of the FMIA. They specifically cited 21 U.S.C. 601(m)(1), under which a meat or meat food product is adulterated if it bears or contains any poisonous or deleterious substance that may render it injurious to health. The petitioners argued that applying the provision to STEC in addition to serogroup O157 is justified because current scientific and medical research demonstrates that the dangers associated with *E. coli* O157:H7 extend to all pathogenic STEC. They referred to the potential for non-O157 STEC to cause HUS, the prevalence of the non-O157 STEC among foodborne pathogens, cattle as reservoirs of the pathogen, the presence of non-O157 STEC in beef products, and the implication of non-O157 STEC in outbreaks of foodborne illness. Because these non-O157 STEC have the same characteristics as O157 STEC, they argued, these pathogens ought to have the same legal status as O157 STEC.[18]

In an addendum to the petition, filed February 22, 2010, petitioners submitted a copy of a 2007 journal article by FDA scientists detailing a PCR method for identifying isolates that include the six most prevalent non-O157 STEC. The petitioners also provided a study that they commissioned to analyze retail ground beef samples.[19]

In correspondence with the petitioners, FSIS stated that when the Agency had an appropriate laboratory method for conducting regulatory sampling for some non-O157 STEC and had developed a plan for how it intends to address the issue, it would make the plan available to the public for comment. The Agency would then provide a final response to the petition.[20]

The petitioners filed a Supplemental Statement of Additional Grounds on May 7, 2010. In their Supplemental Statement, they cited studies of illness outbreaks linked to non-O157 STEC and a paper on the feasibility of testing ground beef and milk for Shiga-like toxin-producing *E. coli*.[21] The petitioners filed a Second Supplemental Statement of Additional Grounds on September 2, 2010, in light of the STEC

[12] Luchansky, J.B. 2010. Unpublished data. Portions of this research were presented at the Annual Meeting of the International Association for Food Protection, August 1–4, 2010, Anaheim, CA.

[13] Duffy G, Walsh C, Blair IS, and McDowell DA. 2006. Survival of antibiotic resistant and antibiotic sensitive strains of *E. coli* O157 and *E. coli* O26 in food matrices. Int J Food Microbiol. 109(3):179–86.

[14] Bosilevac JM and M Koohmaraie. 2011. Prevalence nd Characterization of Non-0157 Shiga toxin Producing Escherichia coli Isolated from Commercial Ground Beef in the United States. Appl Environ Microbiol. Published ahead of print on 21 January 2011, doi:10.1128/AEM.02833–10.

[15] Samadpour M. 2011. Prevalence of Toxin containing non-O157 Escherichia coli found in Commercial Ground Beef. In preparation.

[16] Arthur TM, Barkocy-Gallagher GA, Rivera-Betancourt M, and Koohmaraie M. 2002. Prevalence and characterization of non-O157 Shiga toxin-producing Escherichia coli on carcasses in commercial beef cattle processing plants. Appl Environ Microbiol. 68(10):4847–52.

[17] For the transcript and presentations, go to *http://www.fsis.usda.gov/News_&_Events/2007_Events/index.asp* (accessed Jul. 20, 2010).

[18] *http://www.fsis.usda.gov/PDF/Petition_Marler_100509.pdf* (Accessed Nov. 30, 2010).

[19] *http://www.fsis.usda.gov/PDF/Petition_Marler_Clark_022210.pdf* and *http://www.fsis.usda.gov/PDF/Petition_Marler_Cover%20Letter.pdf* (Accessed Nov. 30, 2010.)

[20] Philip S. Derfler, Assistant Administrator, Office of Policy and Program Development, FSIS/USDA. April 8, 2010. Letter to William Marler, Esq., Marler-Clark, LLP, PS. At: *http://www.fsis.usda.gov/PDF/Petition_Marler_Clark_Progress_Response.pdf* (Accessed Nov. 30, 2010.)

[21] Acheson, D.W.K., *et al.* 1996. Detection of Shiga-like Toxin-Producing Escherichia coli in Ground Beef and Milk by Commercial Enzyme Immunoassay. J. Food Prot. 59:4:344–349.

O26 outbreak, discussed below, that was linked to ground beef. They attached a May 21, 2010, CDC memorandum on Non-O157 STEC outbreaks in the United States. The memorandum, referring to a recent STEC O145 outbreak in romaine lettuce, expressed the opinion that as the ability of clinical laboratories to detect non-O157 STEC has improved, more of the organisms were being detected.

Letter to Secretary of Agriculture From American Meat Institute

In an August 18, 2010, letter from American Meat Institute (AMI) President and CEO J. Patrick Boyle to Secretary of Agriculture Tom Vilsack, AMI offered to work with the Department on the control of STEC. AMI expressed concern that the designation of non-O157 STEC as adulterants might ''result in a misdirected regulatory program that would do more harm than good.'' AMI addressed several matters relating to FSIS policy on non-O157 STEC and the extent to which the non-O157 STEC are a health risk. We have considered these concerns and recommendations as we have developed this policy.

FSIS regards testing of non-intact raw beef products and components of products as just one of several verification methods the Agency uses. These include verification of establishment HACCP systems, Sanitation Standard Operating Procedures (Sanitation SOPs) and other prerequisite programs, comprehensive food safety assessments, and checks on records of purchases from suppliers.

FSIS actively engages experts and the public in ongoing discussions of public health issues and the science associated with our actions. For example, FSIS held public meetings on non-O157 STEC policy in 2007 and 2008 that involved presentations by domestic and international experts from Government, industry, and academia. Participants discussed the bases for determining non-O157 STEC to be adulterants, epidemiological evidence of increasing incidence of non-O157 STEC, and the importance of barriers and interventions in food production and processing to prevent contamination with STEC. The Agency is planning further evaluations and will use the findings to assess industry compliance and controls for pathogens in raw beef products. FSIS requests comments on whether to hold a technical meeting during the comment period for this document or later.

FSIS has prepared guidance for the validation of test kits for the detection of pathogens, including both *E. coli* O157:H7 and non-O157 STEC (see below). This guidance should enable test kit developers to determine the effectiveness of their products. Also, as discussed elsewhere in this document, FSIS is making available its screening and isolation methods for non-O157 STEC. These methods were included in the Agency's Microbiology Laboratory Guidebook.

FSIS intends to perform a nationwide microbiological baseline survey on beef carcasses in late 2011. This microbiological survey will analyze samples from carcasses for the presence of the pathogens *E. coli* O157:H7 and the STEC identified in this rule, *Salmonella,* and indicator bacteria (generic *E. coli,* coliforms, and Enterobacteriaceae). Regarding the analytical method to be used, FSIS is making its method publicly available and will include it in the Agency's Microbiological Laboratory Guidebook.

IV. STEC Policy Implementation

Implementation, Status of Laboratory Methods

As noted above, FSIS intends by March 5, 2012, to begin implementing a routine sampling program that will include, besides *E. coli* O157:H7, six additional STEC serogroups (O26, O45, O103, O111, O121, and O145). FSIS will initially sample raw beef manufacturing trimmings and other ground beef product components produced domestically and imported, and test the samples for these serogroups. When FSIS implements its testing program, the Agency will consider other products, including raw ground beef contaminated with any of the six additional STEC serogroups to be adulterated. The Agency is planning later—as soon as laboratory capacity is available—to expand this program to conduct verification testing of ground beef products for these serogroups. Data gathered from the sampling will enable the Agency to gauge more precisely the level of hazard posed by these STEC. In general, FSIS will review the information and adjust its policies and implementation strategies consistent with direction in Executive Order 13563 to retrospectively analyze rules ''that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' FSIS will issue a **Federal Register** document informing stakeholders before expanding its verification testing to include raw beef products other than beef manufacturing trimmings and other ground beef components.

When FSIS samples trim or other ground beef components, FSIS will now test up to two portions of product (up to 325 g per portion) collected at an establishment to test for *E. coli* O157:H7 and, upon initiation of the actions outlined in this document, for the additional six non-O157 STEC (serogroups O26, O45, O103, O111, O121, and O145). Also, a single 325-g ground beef sample will now be tested for *E. coli* O157:H7 upon initiation of the actions outlined in this document.

FSIS has previously tested five separate 65-g sub-samples of the sample collected at an establishment for *E. coli* O157:H7. An Agency study showed the new method to be not as sensitive as the old method in detecting the lowest levels (1–4 CFR/325g) of *E. coli* O157:H7 cells. However, the difference in sensitivity was not statistically significant. Using the new method would permit FSIS to analyze more samples at the same or less laboratory costs than the present method. Because the sensitivity of the new method is comparable, if not actually equal, to that of the present method, FSIS expects the new approach to yield laboratory cost efficiencies with no significant statistical difference in the analytical results.

The Agency will use the new modified trypticase soy broth with novobiocin plus casaminoacids (mTSB+n) enrichment medium described in the FSIS Microbiology Laboratory Guidebook MLG chapters 5.06 and 5B.01 the preparation step of its procedure for identifying the six non-O157 STEC. Testing for non-O157 STEC with a polymerase-chain-reaction (PCR) test involves a two-stage PCR screening test: the first stage will detect samples positive for *stx* and *eae* (intimin). In the second stage, samples will be screened for the presence of one of the six public health-relevant serogroups (O26, O45, O103, O111, O121, and O145). A sample will be identified as ''potential positive'' when it tests positive for the *stx* gene and the *eae* gene and is also positive for one or more of the target O-group genes (on day three of the analysis).

Samples that are ''potential positive'' are further analyzed by using immunomagnetic beads to capture the target analyte. The immunomagnetic beads are used to inoculate Rainbow Agar plates. After incubation (day 4 of the analysis), the plates are observed for colonies that have an appearance typical of the target analyte. Typical colonies are tested with latex agglutination reagents specific for the target serogroup, if at least one colony tests positive by latex agglutination, the sample is called ''presumptive

positive.'' This is similar to *E. coli* O157:H7 analysis; typical colonies are tested using latex agglutination reagents on analytical day 4.

Samples that screen positive at the first stage of testing (stx+, eae+) for non-O157 STEC but screen negative at the second stage (O-group negative) will *not* be regarded as potential positive results. FSIS would not consider the results to be evidence of adulteration. However, such screen-positives do indicate the potential presence of an organism capable of producing Shiga toxin (*stx*) and intimin (*eae*) and may indicate conditions that allow pathogenic STEC through the system. Therefore, FSIS will use these results to inform its verifications of HACCP system adequacy, in accordance with 9 CFR 417.8.

In order for a sample to be ''confirmed positive,'' FSIS will further characterize the isolates by biochemical tests. A confirmed positive sample will be one where an isolate has *stx, eae,* and one or more of the target O-group genes and has been biochemically confirmed to be *E. coli.* (By comparison, a sample is confirmed positive for *E. coli* O157:H7 if biochemical tests identify the isolate as an *E. coli,* serological or PCR tests identify it as an O157, and serological or PCR tests detect Shiga toxin production, or are positive for the *stx* gene, or determine the isolate to be ''H7.'')

The detection and isolation methodology for non-O157 STEC is described in chapter MLG 5B.00, or current revision, of the FSIS Microbiology Laboratory Guidebook, available at: *http://www.fsis.usda.gov/PDF/Mlg_5B_00.pdf.* FSIS will advise the establishment to hold the sampled product and not release it pending negative test results. If test results are positive and product has been released into commerce, FSIS will request that the producing establishment recall that product.

FSIS estimates that most sampled product will screen negative for non-O157 STEC at the first stage of testing and that the negative results will be available within 48 hours of shipment of the samples to the laboratory. For samples that screen positive, an additional three to five days may be necessary for a confirmed positive or negative result. However, as the Agency gains experience and data, and as the performance of test methods improves, the Agency hopes to reduce the time needed to obtain definitive results.

For imported products tested at port of entry, if the product tests positive at the second stage and has been not been held at the import establishment, it will be subject to recall. If the product has been held, the product will be refused entry. As always, product subsequently presented for import inspection from the same foreign country and establishment will be held at the official import establishment pending results. The FSIS Office of International Affairs will notify the program officials of the affected exporting country as soon as a positive result is reported, so that they can determine whether the producing establishment has exported any other product from the same production lot to the United States. As in the control of *E. coli* O157:H7, if the foreign establishment has properly defined the product lot on the basis of specific control factors, and accurately tracked the containerization of product produced under those controls, the establishment can reduce the likelihood that adulterated product will enter commerce, and can more easily recover product if a sample is positive.

Control factors recommended by FSIS for use in defining the product and container destined for the United States include *E. coli* sampling programs for distinguishing production subsets; cross-contamination preventions incorporated in Sanitation SOPs; re-work controls; and other prerequisite programs. Other control factors may include sanitary dressing procedures; employee hygiene, processing interventions that limit or reduce *E. coli* contamination; elimination of ''carry over'' of manufacturing trimmings, raw beef components, or re-work from one production period to the next; and sanitation of product contact surfaces, including machinery and employee hand tools.

Generally, FSIS recommends that establishments develop and implement in-plant sampling plans that define production lots or sub-lots that are microbiologically independent of other production lots or sub-lots. Production lots that are so identified may bear distinctive markings on the shipping cartons and—on exported product—foreign health certificates. If a foreign government or establishment does not apply control factors, FSIS may default to defining the product represented by a microbiological sample as all product produced on a particular production day.

FSIS expects to begin the non-O157 STEC program by analyzing raw beef manufacturing trimmings and other ground beef product components. For imported product, FSIS intends to conduct sampling of imported beef manufacturing trim and ground beef components at official import inspection establishments.

FSIS believes that, by testing trim samples and other components for the non-O157 STEC, the Agency can offer an immediate measure of public health protection commensurate with the Agency's regulatory requirements. The Agency expects eventually to test ground beef, hamburger, and beef patty products for STEC. In taking a staged approach to the implementation of this new testing program, the Agency should be able to use its resources most effectively.

Expected Industry Response

The beef industry currently applies a range of sanitary slaughter methods to control *E. coli* O157:H7 in raw non-intact beef products. These include hide washing, sanitary hide removal, pre-evisceration organic acid rinses, spot cleaning of carcasses with viscera contamination, thermal pasteurization of dressed carcasses to reduce microbial loads, and chilled carcass treatments. These methods are typically applied in a slaughter plant sanitation program to prevent the carry-over of bacterial contamination from the farm or feedlot to the slaughter floor and meat processing areas.

Many establishments that produce raw non-intact beef products, such as ground beef, incorporate such antimicrobial interventions as organic acid sprays in their processing. These methods should be as effective in controlling non-O157 STEC as they are in controlling *E. coli* O157:H7. In this respect, the industry would incur no additional processing costs in controlling non-O157 STEC as a result of the policy the Agency is adopting. However, from the experience in controlling *E. coli* O157:H7, FSIS anticipates that many firms will want to implement their own testing programs and even to conduct the same kind of testing that FSIS plans to carry out. Some firms already test their products for *E. coli* O157:H7 and provide the further processing, wholesale, or retail businesses they supply with certificates of analysis on the product testing they have conducted. They may want to test for non-O157 STEC and certify to their customers that they have done so.

FSIS will follow the same procedures with respect to non-O157 STEC as it follows for *E. coli* O157:H7. A first-stage screen positive (*stx* and *eae*) is evidence of the presence of Shiga toxin and intimin and may indicate that an establishment is not adequately addressing hazards reasonably likely to occur. Establishments should reassess their HACCP plans, Sanitation Standard Operating Procedures, or other prerequisite programs on the basis of

this evidence. If the reassessment results indicate that pathogenic STEC are reasonably likely to occur in the production process, the establishment's HACCP plan must address them.

New Checklist

In addition, in the coming months, FSIS plans to conduct a new ''checklist'' survey of its field inspection personnel who are stationed in beef slaughtering and processing establishments. As they did in 2007 with respect to *E. coli* O157:H7, inspection personnel at official establishments that slaughter, fabricate, grind, mechanically tenderize, or enhance by tumbling, massaging, or injecting beef products with substances such as marinades will complete an on-line checklist on how the establishments address STEC. This checklist will provide information on this class of establishments regarding the methods they use to prevent product contamination.

State Programs and Foreign Government Programs

States that have their own meat inspection programs for meat products produced and transported solely within the State are required to have mandatory ante-mortem and post-mortem inspection, reinspection, and sanitation requirements that are at least equal to those in the Federal Meat Inspection Act (21 U.S.C. 661(a)(1)). Therefore, these States' sampling procedures and testing methods for non-O157 STEC in raw beef products must be at least as sensitive as FSIS's procedures and testing methods for non-O157 STEC.

Foreign countries that are eligible to export meat products to the United States must apply inspection, sanitary, and other standards that are equivalent to those that FSIS applies to those products (21 U.S.C. 620). Thus, in evaluating a foreign country's meat inspection system to determine the country's eligibility to export products to the United States, FSIS will consider whether the testing methods and procedures for non-O157 STEC that the country applies are equivalent to those that FSIS uses.

Time-Frame for Complete Enforcement

FSIS intends to be able to begin implementing regulatory sampling for the six non-O157 STEC in March 2012. FSIS would take action on positive samples following the same procedures as those currently followed with respect to samples that test positive for *E. coli* O157:H7.

In an effort to increase awareness of this policy, FSIS will conduct extensive outreach to FSIS- and State-regulated small and very small meat establishments throughout the U.S. and its territories in 2011 and early 2012 as well as to foreign countries. The Agency plans to hold workshops and webinars throughout the United States. FSIS will announce exact locations and dates of these events once they are determined. In addition, FSIS will extend its outreach to these establishments by participating at conferences, trade shows, and meetings that cater to meat producers, and developing and disseminating written articles, and audio podcasts on the changes. FSIS welcomes comments on this implementation plan and on whether the Agency should hold a public meeting on the issues addressed in this document during the public comment period.

Validation Guidance for Pathogen Detection Test Kits

FSIS is announcing the availability of a compliance guide on validating performance of pathogen test kit methods. FSIS will post this compliance guide on its Significant Guidance Documents Web page (*http://www.fsis.usda.gov/Significant_Guidance/index.asp*). FSIS encourages those organizations that design or conduct validation studies for foodborne pathogen testing methods to avail themselves of this guidance document in meeting the pertinent regulatory requirements. FSIS is also soliciting comments on this compliance guide. The Agency will consider carefully all comments submitted and will revise the guide as warranted.

Note: The use of ''validation'' in the guidance document is not intended to have any application to the implementation of 9 CFR 417.4(a)(1) (Validation, Verification, Reassessment) on initial validation of HACCP plans.

V. Anticipated Costs and Benefits Associated With This Policy

FSIS has estimated that implementation of its non-O157 STEC testing policy will result in costs to FSIS laboratories and to the regulated industry. However, the costs are low for a policy that we believe is warranted, given the information presented above, and we believe that the benefits justify the costs.

Budgetary Costs to the Agency

There will be direct, immediate costs to FSIS laboratories for analyzing trim samples for non-O157 STEC. The Agency has estimated these costs to be approximately $204,050 to $338,270 per year in 2010 dollars, depending on the number of samples analyzed.[22] The costs include equipment, supplies and labor for screening, screen-positive isolations, most-probable-number (MPN) procedures, MPN-positive isolation, pulsed-field gel electrophoresis (PFGE), and PFGE-positive isolation.[23] Some key assumptions behind these cost estimates are as follows:

- Because the laboratory analysis of samples of beef trim and other components for non-O157 STEC is an extension of the program for *E. coli* O157:H7, we only have to estimate the marginal or additional cost. There is no additional cost for shipping or sample-collection time.
- The annual number of samples is the same as the number of *E. coli* O157:H7 beef trim samples—currently an average of 2,578 samples for beef trim and other components are analyzed per year (2008–2010, sample collection rate about 45 percent).[24] However, the Agency is aiming to increase the sample collection rate to 80 percent. In that case, the annual number of samples to be analyzed will be about 4,600.
- Screen-positive sample rate is 2 percent, the same as with *E. coli* O157:H7.
- Confirmed positive sample rate is 0.5 percent, again the same as with O157:H7.[25]

FSIS will conduct follow-up testing as it does for *E. coli* O157:H7. The Agency data show that the average number of domestic follow-up testing in 2008–2010 is about 880.[26] The Agency also estimates that the cost per follow-up testing is about $80. Therefore, the cost for follow-up testing will be about $70,400.

In addition, FSIS will conduct a for-cause food safety assessment (FSA) for every positive sample, as it does currently for *E. coli* O157:H7-positive samples. The Agency estimates the average cost to conduct an FSA (including laboratory work) to be about $14,000. Assuming the foregoing, the cost to FSIS to conduct the for-cause FSA related to non-O157 STECs will be

[22] The costs are about $204,100 if 2,578 samples are collected and analyzed, or $338,300 if 4,600 samples are collected and analyzed. Please see assumption in the text.

[23] Data are from the Laboratory Director, Office of the Assistant Administrator, Office of Public Health Science, FSIS.

[24] Data are from the Data Analysis and Integration Group, the Office of Data Integration and Food Protection, FSIS. The numbers of samples include both domestic and imported product samples.

[25] Data are from the Laboratory Director, Office of the Assistant Administrator, OPHS, FSIS.

[26] Data is from Data Analysis and Integration Group, the Office of Data Integration and Food Protection. The numbers of samples include both domestic and imported product.

about $180,460 to $322,140 per year (*i.e.* cost per FSA × annual number of samples × confirmed positive sample rate).[27] Adding the cost to conduct sample testing, follow-up testing and for-cause FSAs, the total cost to the Agency is about $454,910 to $730,810. Note that these cost estimates do not include the costs of expanding testing to raw ground beef products. FSIS intends to provide a full analysis of costs before expanding the testing policy.

Costs to the Industry

The major costs to the industry will be two-fold: (1) Costs to establishments of starting their own screening for non-O157 STEC and (2) costs of diverting the positive product to cooking or other treatment that would render the product suitable for human food. (Positive-testing product also can be destroyed—sent to a landfill, incinerated, etc.—or rendered into pet food and other products not for human food.) To estimate these costs with precision, we need to know how many establishments will be testing for non-O157 STEC under this document and their HACCP sizes (large, small, or very small). Because the Agency cannot predict with certainty either the number of establishments or the size distribution, our estimate is preliminary.

FSIS is not aware of data on how many establishments are currently testing for non-O157 STEC, or the size distribution of these establishments. The Agency's best estimate is that about 20 percent of the establishments are testing.[28] According to information collected under FSIS Notice 65–07, 33 percent of the beef slaughter establishments test for *E. coli* O157:H7.[29] Assuming that the percentage of establishments testing for non-O157 would increase to the same level (*i.e.* 33 percent), we would see 13 percent more establishments starting to test for non-O157 because of this document. The most current Agency beef trim volume survey data, computed from the number of bins of trim produced, show that the total beef trim production is about 2.05 billion pounds per year.[30] Given that in commercial testing a combo bin is 2,000 pounds, an additional 133,000 combo bins will be tested (total beef trim production/weight per combo bin × additional percentage that will test). Further assuming the cost per test is $30 to $40, the preliminary estimate for the cost of the additional 13 percent of establishments testing for non-O157 is about $4.0 million (if $30 per test) to $5.3 million (if $40 per test.)[31] This is a preliminary estimate and we invite the regulated industry and the public to comment.

To estimate the loss of value from diverting the products to cooking once they test positive, we rely on market data on the wholesale price for beef trim and on internal experts' opinion on the price differential between beef trim and cooked beef products. Market data show that the 3-year average wholesale price for beef trim is about $1.47 per pound.[32] Agency experts estimate that the value for cooked beef products is significantly lower—only about one-half to one-third of the value of beef trim, because the quality of product directed to cooking is generally inferior. On the basis of this assumption, we calculate the loss to the industry from diverting the products to cooking to be about $3.9 to $5.2 million.[33] Again, this is a very preliminary estimate, and we invite comment.

As for the cost of holding the products while awaiting test results, Agency data show that the great majority of the establishments are already holding their products while awaiting the results of other pathogen testing.[34] The Agency cannot estimate with precision how many more products will be held as a result of FSIS testing for one more pathogen group, but given that the great majority of the products are already being held, the addition is not likely to be significant. Because non-O157 STEC tests will use the samples collected for existing sampling programs, there will be no additional collection of samples. For the establishments that are already holding products for O157 and other pathogen test results, the additional cost will only be holding for one extra day waiting for the confirming non-O157 STEC results, which is minimal. For the few establishments that are not holding products, they would have to do so under the proposed ''Test and Hold'' Notice, and the additional cost would also only be holding for one more day waiting for the non-O157 STEC results.

As we have stated in this document, many establishments that produce raw non-intact beef products implement controls for *E. coli* O157:H7. These methods should be as effective in controlling non-O157 STEC as in controlling *E. coli* O157:H7. In this respect, the industry would incur no additional processing costs in controlling non-O157 STEC as a result of this document.

Note that these cost estimates do not include the costs associated with expanding FSIS testing to raw ground beef products. FSIS intends to provide a full analysis of costs before expanding the testing policy.

Expected Benefits

Reduced Illnesses and Deaths

One benefit from sampling and testing for non-O157 STEC is the reduction of illnesses and deaths caused by non-O157 STEC, if testing leads to preventative controls that reduce the risk of illness. As we have stated, controls for *E. coli* O157:H7 already in place should be as effective in controlling non-O157 STEC as in controlling *E. coli* O157:H7, and the industry would not need to take additional measures to control non-O157 STEC as a result of the document. However, to the extent that establishments reassess their HACCP plans after receiving positive test results and make appropriate additional changes, overall control of pathogens may improve and illness reductions may result.

Avoided Recalls

Through early detection of products contaminated with non-O157 STEC, this new program may prevent some food recalls. However, on net, the additional testing may increase the total number of recalls as the new policy would require the recall of all products that test positive and have entered commerce, regardless of whether they are

[27] Data are from the Laboratory Director of Office of the Assistant Administrator, OPHS, FSIS and from the Budget Division, Office of Management, FSIS.

[28] This is based on internal experts' opinion.

[29] U.S. Department of Agriculture. Food Safety and Inspection Service. August, 2008. Results of Checklist and Reassessment of Control for *Escherichia coli* O157:H7 in Beef Operations. Table 5.4.31, p. 57.

[30] Data are from Applied Analysis Branch, Data Analysis and Integration Group, Office of Data Integration and Food Protection/FSIS/USDA as of October 12, 2010.

[31] Other assumptions behind this estimate include: (1) Positive sample rate being 2 percent—the same with the positive sample rate in FSIS sampling, (2) one test per sample, and (3) using IEH methodology.

[32] Economic Research Service (ERS), USDA, Market and Trade Economics Division provided the data; which are originally from Red Meats Yearbook (*http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1354*) and Livestock, Dairy, and Poultry Newsletter tables (*http://www.ers.usda.gov/publications/ldp/LDPTables.htm*) [both accessed Jan. 20, 2011]. The 3-year range is September 2007 to August 2010.

[33] The equation for calculating the cost for diverting product to cooking is: annual beef trim produced (in pound) × screening positive sample rate × percentage of the value lost × dollar value per pound × percentage of additional establishments testing for STEC.

[34] According to the most recent full-year data (2009) from Data Analysis and Integration Group/Office of Data Integration and Food Protection, the percentages of beef trim and components held by establishments pending FSIS *E. coli* O157:H7 test results are: 99 percent by large, 97 percent by small and 88 percent by very small establishments. Data are as of December 23, 2010.

associated with an outbreak or not. Any recall may have a significant impact on the industry, including the loss of sales revenue, the cost to dispose of recalled products, and the loss of consumer confidence and business reputation. Recalls negatively impact consumers by creating anxiety and time-consuming inconveniences (*e.g.* looking for recall information, checking the products purchased, returning or disposing of products identified by the recalls, etc.). For the Government, the Agency incurs costs for conducting recalls [35] and recovery of adulterated products. The Food and Drug Administration has estimated that a Class I recall [36] may cost as much as $3 to $5 million for the manufacturer, retailers, and State, local, and Federal authorities.[37]

The first and only FSIS non-O157 STEC recall to date took place in August 2010. It is not clear how many recalls would have occurred if the new testing policy had been implemented or whether, on net, the policy will decrease or increase the number of recalls.

Net Benefits

As explained in the Expected Costs and Expected Benefits Sections, there are uncertainties in our cost and benefit estimates. For example, we do not know how many illnesses will actually be prevented. It is not clear whether on net there will be a reduction in the number of illnesses. It is also challenging to know what the industry cost will be because it is difficult to predict how many establishments will start to test and what the size distribution will be or to what extent industry will take additional measures that will prevent, reduce, or control those hazards, as they do with regard to O157 STEC.[38]

However, the Agency has determined that the potential public health benefits justify the costs.

Impact on Small Business [39]

This FSIS document on non-O157 STEC does not impose a testing requirement on official establishments. As mentioned above, establishments are already required to identify hazards reasonably likely to occur and to take measures that will prevent, eliminate, or reduce those hazards under HACCP. The measures could include purchase specifications in a prerequisite program, sanitary activities, and using antimicrobials or other lethality treatments on raw beef product. Establishments that produce non-intact raw beef products, such as ground beef, or the intact raw components of those products, must already operate food safety systems that control STEC O157. Therefore, this document does not impose significant negative impact on a significant number of small and very small businesses. FSIS is requesting comment on the impact of this document on small businesses.

Summary of Requests for Comment

FSIS is requesting comment on the following specific subjects discussed in this document related to non-O157 STEC serogroups O26, O45, O101, O121, and O145:

- FSIS regulatory sampling plan for non-O157 STEC for the above serogroups
- Suggestions for baseline survey of non-O157 STEC prevalence in certain raw beef products
- Whether a technical meeting on methods for controlling non-O157 STEC should be held during the comment period
- Whether to hold an additional public meeting on the plan for implementing the policy on non-O157 STEC
- Validation guidance for pathogen detection test kits
- Preliminary estimates of the cost per test for non-O157 STEC
- Estimates of the loss to industry of diverting positive-testing product to cooking
- The usefulness of technical workshops for small and very small establishments
- What obstacles might prevent establishments from adjusting to the FSIS policy on non-O157 STEC by March 5, 2012 and what alternative implementation date would be more practical
- What education, outreach, or training materials would be of greatest assistance to establishments in preparing for implementation of the Agency's policy
- For foreign governments, what additional information would be helpful in addressing equivalency or implementation concerns not already addressed in this document and accompanying materials

We are also requesting comment on the DRAFT Risk Profile for Pathogenic Non-O157 Shiga Toxin-Producing *Escherichia coli* that we are making available at *http://www.fsis.usda.gov/PDF/Non_O157_STEC_Risk_Profile.pdf.* FSIS undertook the preparation of the risk profile to help clarify the extent of the scientific literature available for evaluating the issues raised by the Citizen's Petition.

USDA Nondiscrimination Statement

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Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this document, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2010_Notices_Index/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices,

[35] This includes inspectors' activities at the establishments, FSAs and recall effectiveness checks, and dissemination of information about recalls through press releases.

[36] A Class I recall is defined as a health hazard situation where there is a reasonable possibility that the use of the products will cause serious, adverse health consequences. Non-O157 STEC outbreak fits in this category.

[37] Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice Products, 63 FR 24258, May 1, 1998.

[38] One common measure that establishments use is purchase specifications in a prerequisite program. FSIS Directive 10,010.1 stipulates that FSIS expects the establishment to have: (1) A document from each supplier that provides assurance that the supplier employs CCPs (critical control points) that address *E. coli* O157:H7, (2) certificates of analysis and the sampling method used by the supplier, and (3) records that verify on an on-going basis that the receiving establishment is executing its program effectively. Other measures establishment can use include (a) treating or washing the product when removed from Cryovac bags and trimming the outer surface before processing non-intact product, and (2) using antimicrobials or other lethality treatments on raw beef product and verifying the effectiveness of those antimicrobials. (FSIS Directive 10,010.1)

[39] Based on FSIS' HACCP (Hazard Analysis and Critical Control Points) size definition: very small establishments have fewer than 10 employees or generate less than $2.5 million in annual sales; and small establishments have 10 or more but fewer than 500 employees and generate more than $2.5 million in annual sales.

FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done, at Washington, DC, September 13, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–24043 Filed 9–19–11; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 100

[Docket Nos. PRM–50–97, PRM–50–98, PRM–50–99, PRM–50–100, PRM–50–101, PRM–50–102; NRC–2011–0189]

Petitions for Rulemaking Submitted by the Natural Resources Defense Council, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Petitions for rulemaking; notice of receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received six petitions for rulemaking (PRM), dated July 26, 2011, from the Natural Resources Defense Council, Inc. (NRDC or the petitioner). The petitioner requests that the NRC amend its regulations to require emergency preparedness (EP) enhancements for prolonged station blackouts; EP enhancements for multiunit events; licensees to confirm seismic hazards and flooding hazards every 10 years and address any new and significant information; licensees to improve spent nuclear fuel pool safety; each operating and new reactor licensee to establish station blackout mitigation strategies and resources; and more realistic, hands-on training and exercises on Severe Accident Mitigation [sic] Guidelines and Extreme Damage Mitigation Guidelines for specified licensee staff. The NRC is not instituting a public comment period for these PRMs at this time.

ADDRESSES: You can access publicly available documents related to this action, including the six petitions for rulemaking, using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copies made, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* For the ADAMS accession numbers to the six PRMs, see Section I, Procedural Processing, of this document.
- *Federal Rulemaking Web Site:* Supporting materials related to the six petitions for rulemaking can be found at *http://www.regulations.gov* by searching on the related Docket IDs. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3667, e-mail: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Procedural Processing

The petitions for rulemaking were docketed by the NRC on July 28, 2011, and have been assigned the following Docket Numbers and can be accessed in ADAMS under the associated ADAMS accession number:

Title	Docket Nos.	ADAMS ML No.
Emergency Preparedness Enhancements for Prolonged Station Blackouts	PRM–50–97	ML11216A237
Emergency Preparedness Enhancements for Multiunit Events	PRM–50–98	ML11216A238
Seismic Hazards and Flooding Hazards	PRM–50–99	ML11216A239
Spent Nuclear Fuel Pool Safety	PRM–50–100	ML11216A240
Station Blackout Mitigation	PRM–50–101	ML11216A241
Training on Severe Accident Mitigation [sic] Guidelines	PRM–50–102	ML11216A242

Each submission separately cites the ''Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (Fukushima Task Force Report, ML111861807), dated July 12, 2011, as the rationale for the petition for rulemaking. The Commission has recently directed staff to engage promptly with stakeholders to review and assess the recommendations of the Fukushima Task Force Report for the purpose of providing the Commission with fully-informed options and recommendations. *See* U.S. Nuclear Regulatory Commission, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' Staff Requirements Memorandum SECY–11–0093, August 19, 2011 (ADAMS Accession No. ML112310021) and U.S. Nuclear Regulatory Commission, ''Engagement

of Stakeholders Regarding the Events in Japan,'' Staff Requirements Memorandum COMWDM–11–0001/COMWCO–11–0001, August 22, 2011 (ADAMS Accession No. ML112340693). The NRC will consider the issues raised by these PRMs through the process the Commission has established for addressing the recommendations from the Fukushima Task Force Report, and is not providing a separate opportunity for public comment on the PRMs at this time.

II. Petitioner

The NRDC is a national, nonprofit, membership environmental organization incorporated in New York in 1970. The NRDC has offices in Washington, DC, New York City, San Francisco, Chicago, Los Angeles, and Beijing. The staff membership of NRDC consists of lawyers, scientists, and policy experts. The NRDC states that its purpose is to maintain and enhance environmental quality and monitor Federal agency actions to ensure that Federal statutes enacted to protect human health and the environment are fully and properly implemented. With regard to the NRC, the NRDC asserts that, since its inception in 1970, it has sought to improve the environmental, health, and safety conditions at the nuclear facilities licensed by the NRC and its predecessor agency.

III. Petitions

All six PRMs cite the Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (Fukushima Task Force Report), dated July 12, 2011, currently under review by the Commission, as the rationale and bases for the petitions for rulemaking. The Fukushima Task Force was a group of NRC staff experts specifically selected to review the Fukushima Dai-ichi Accident and made recommendations applicable to power reactors in the United States. A summary of each PRM follows.

1. Require EP Enhancements for Prolonged Station Blackouts. [PRM–50–97]

The petitioner requests that the NRC institute a rulemaking proceeding applicable to nuclear facilities licensed under 10 CFR 50, 52, and other applicable regulations to require emergency preparedness enhancements for prolonged station blackouts in the areas of (1) Communications ability, (2) Emergency Response Data System capability, (3) training and exercises, and (4) equipment and facilities. The petitioner cites Section 4.3.1, pages 50–56—regarding the requiring of facility emergency plans to address prolonged station blackouts—of the Fukushima Task Force Report as the rationale for its PRM.

2. Require EP Enhancements for Multiunit Events. [PRM–50–98]

The petitioner requests that the NRC institute a rulemaking proceeding applicable to nuclear facilities licensed under 10 CFR parts 50, 52, and other applicable regulations to require EP enhancements for multiunit events in the areas of (1) Personnel staffing, (2) dose assessment capability, (3) training and exercises, and (4) equipment and facilities. The petitioner cites Section 4.3.1, pages 50–56—regarding the requiring of facility emergency plans to address multiunit events—of the Fukushima Task Force Report as the rationale for its PRM.

3. Require Licensees To Confirm Seismic Hazards and Flooding Hazards Every 10 Years and Address Any New and Significant Information. [PRM–50–99]

The petitioner requests that the NRC institute a rulemaking proceeding applicable to nuclear facilities licensed under 10 CFR parts 50, 52, 100, and other applicable regulations to require licensees to confirm seismic hazards and flooding hazards every 10 years and address any new and significant information, which would include, if necessary, updating the design basis for structures, systems, and components important to safety to protect against the updated hazards. The petitioner cites Section 4.1.1, pages 25–30—regarding the reevaluation and upgrade of design basis seismic and flooding protection of structures, systems, and components for each operating reactor—of the Fukushima Task Force Report as the rationale for its PRM.

4. Require Licensees To Improve Spent Nuclear Fuel Pool Safety. [PRM–50–100]

The petitioner requests that the NRC institute a rulemaking proceeding applicable to nuclear facilities licensed under 10 CFR parts 50, 52, and other applicable regulations to require licensees to (1) Provide sufficient safety-related instrumentation, able to withstand design-basis natural phenomena, to monitor key spent fuel pool parameters (*i.e.,* water level, temperature, and area radiation levels) from the control room; (2) provide safety-related AC electrical power for the spent fuel pool makeup system; (3) revise their technical specifications to address requirements to have one train of onsite emergency electrical power operable for spent fuel pool makeup and spent fuel pool instrumentation when there is irradiated fuel in the spent fuel pool, regardless of the operational mode of the reactor; and (4) have an installed seismically qualified means to spray water into the spent fuel pools, including an easily accessible connection to supply the water (*e.g.,* using a portable pump or pumper truck) at grade outside the building. The petitioner cites Section 4.2.4, pages 43–46—regarding the enhancement of spent fuel pool makeup capability and instrumentation for the spent fuel pool—of the Fukushima Task Force Report as the rationale for its PRM.

5. Revise 10 CFR 50.63 [Station Blackout Mitigation]. [PRM–50–101]

The petitioner requests that the NRC institute a rulemaking proceeding applicable to nuclear facilities licensed under 10 CFR parts 50, 52, and other applicable regulations to revise 10 CFR 50.63 to require each operating and new reactor licensee to (1) Establish a minimum coping time of 8 hours for a loss of all AC power, (2) establish the equipment, procedures, and training necessary to implement an ''extended loss of all AC'' coping time of 72 hours for core and spent fuel pool cooling and for reactor coolant system and primary containment integrity as needed, and (3) preplan and prestage offsite resources to support uninterrupted core and spent fuel pool cooling and reactor coolant system and containment integrity as needed, including the ability to deliver the equipment to the site in the time period allowed for extending coping, under conditions involving significant degradation of offsite transportation infrastructure associated with significant natural disasters.

The petitioner cites Section 4.2.1, pages 32–39, of the Fukushima Task Force Report, regarding the enhancement of the ability of nuclear power plants to deal with the effect of prolonged station blackout conditions at single and multiunit sites without damage to the nuclear fuel in the reactor or spent fuel pool and without the loss of reactor coolant system or primary containment integrity.

6. Require More Realistic Training on Severe Accident Mitigation Guidelines [PRM–50–102]

The petitioner requests that the NRC institute a rulemaking proceeding applicable to nuclear facilities licensed under 10 CFR parts 50, 52, and other applicable regulations to require more realistic, hands-on training and exercises on Severe Accident Mitigation [sic] Guidelines (SAMGs) and Extreme

Damage Mitigation Guidelines (EDMGs) for licensee staff expected to implement the strategies and those licensee staff expected to make decisions during emergencies, including emergency coordinators and emergency directors. The petitioner cites Section 4.2.5, pages 46–50—regarding the strengthening and integration of onsite emergency response capabilities such as emergency operating procedures, SAMGs, and EDMGs—of the Fukushima Task Force Report as the rationale for its PRM.

IV. Conclusion

The Commission is currently reviewing the Fukushima Task Force Report, including each issue presented in the six petitions for rulemaking. The petitioner solely and specifically cites the Fukushima Task Force Report as the rationale and bases for its six PRMs. The NRC will consider the issues raised by these PRMs through the process the Commission has established for addressing the recommendations from the Fukushima Task Force Report and is not providing a separate opportunity for public comment on the PRMs at this time.

Dated at Rockville, Maryland, this 14th day of September 2011.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–24079 Filed 9–19–11; 8:45 am]

BILLING CODE 7590–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1221

[CPSC Docket No. CPSC–2011–0064]

RIN 3041–AC92

Safety Standard for Play Yards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'') requires the United States Consumer Product Safety Commission (''Commission,'' ''CPSC,'' or ''we'') to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for play yards in response to the direction under Section 104(b) of the CPSIA.

DATES: Submit comments by December 5, 2011.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, *Attn:* CPSC Desk Officer, *Fax:* 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.*

Other comments, identified by Docket No. CPSC–2011–0064, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer directly accepting comments submitted by electronic mail (e-mail), except through *http://www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, and insert the docket number, CPSC 2011–0064, into the ''Search'' box and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Gregory K. Rea, Project Manager, Directorate for Laboratory Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; e-mail *GRea@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008 (''CPSIA,'' Pub. L. 110–314) was enacted on August 14, 2008 Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant and toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. Play yards are one of the products specifically identified in section 104(f)(2)(F) as a durable infant or toddler product.

In this document, the Commission proposes a safety standard for play yards. The proposed standard is based on the voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F 406–11, ''Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards'' (''ASTM F 406–11''). The ASTM standard is copyrighted but can be viewed as a read-only document, only during the comment period on this proposal, at *http://www.astm.org/cpsc.htm*, by permission of ASTM.

B. The Product

1. Definition

ASTM F 406–11 defines a ''play yard'' as a ''framed enclosure that includes a floor and has mesh or fabric sided panels primarily intended to provide a play or sleeping environment for children. It may fold for storage or travel.'' Play yards are intended for children who are less than 35 inches tall who cannot climb out of the product. Play yards are convenient because they usually fold for storage or travel. Some play yards include accessory items that attach to the product, including mobiles, toy bars, canopies, bassinets, and changing tables. The accessory item(s) usually attaches to the side rails or corner brackets of the play yard.

2. The Market

Based on a 2005 survey conducted by American Baby Group titled, ''2006 Baby Products Tracking Study,'' we estimate that approximately 2.9 million

play yards are sold in the United States each year. We estimate that there are 23 manufacturers or importers supplying play yards to the U.S. market. Eleven firms are domestic manufacturers, and 10 firms are domestic importers. Two firms are foreign importers.

Play yards from 11 of the 23 firms have been certified as compliant with the ASTM voluntary play yard standard by the Juvenile Products Manufacturers Association (''JPMA''), the major U.S. trade association that represents juvenile product manufacturers and importers. In addition, three other firms claim compliance with the ASTM voluntary play yard standard and, in some cases, provide test results publicly.

C. Incident Data

The CPSC's Directorate for Epidemiology reports that there have been 2,128 incidents reported to the Commission regarding play yards from early November 2007 until early April 2011. Of the 2,128 reported incidents, there were 49 fatalities, 165 nonfatal injuries, and 1,914 noninjury incidents. The data is drawn from the CPSC's ''Early Warning System'' (''EWS''), a database created in late 2007, which allows the Commission to monitor incoming incident data closely. Once an incident report is entered into EWS, it is carefully reviewed by a subject matter expert. Thus, EWS contains the best data to support the play yard regulatory work.

1. Fatalities

From early November 2007 through early April 2011, there were 49 fatalities associated with play yards. Twenty-seven deaths are attributable to unsafe sleep environments within the play yard, such as the presence of soft or extra bedding, or unsafe sleep practices, such as putting infants to sleep on their stomach instead of their back.

Ten suffocation deaths were caused by unsafe environments around the play yard. Examples of hazardous surroundings include: window blind cords or computer cords that fell into the play yard where the cords formed dangerous loops and resulted in strangulation fatalities. Other deaths were caused when items were placed on top of the play yard to prevent the child from climbing out. These items, such as wood, mesh gates, or crib tents, caused suffocation deaths when children tried to crawl out of the product and became stuck between the side rail and the item placed on top of the play yard.

The remainder of the fatal incidents include:

- Two children were killed in separate incidents when they were able to climb out of a play yard and gain access to a pool. Both children drowned in the pool.
- Two toddlers were killed in separate incidents while standing up in a play yard. It is believed that they leaned forward against the side rail (possibly to reach an object that the child had thrown outside the play yard), lost consciousness, and suffocated when the pressure from the side rail compressed the airway.
- One toddler was killed when the play yard collapsed unexpectedly. The child was trapped and suffocated.
- One death was caused by a looped strap hanging from a changing table accessory. The changing table was supported by the side rails of the play yard. The looped strap fell into the play yard space occupied by the child and resulted in the child's strangulation.
- One death was caused by an assembly error that occurred when the mattress pad was not secured completely to the bottom of the play yard. The child suffocated in the pocket created between the unsecured mattress pad and the floor of the play yard.
- Five other deaths are associated with play yards, but there was insufficient information to determine the cause.

2. Nonfatal Injuries

From early November 2007 through early April 2011, there were 2,079 nonfatal incident reports. Of those, 165 incidents involved an injury, and four of those required hospitalization. Although the remaining 1,914 nonfatal incident reports did not result in an injury, many of the descriptions indicate the potential for serious injury or death.

The largest number of nonfatal incident reports were attributable to the unexpected collapse of the side rail of a play yard. Of the 2,079 nonfatal incident reports, 1,902 involved the collapse of one or more sides of a play yard. Of the 165 incidents involving an injury, 124 were the result of a play yard side rail collapse. Of the 124 injuries, there was one hospitalization for a concussion that was caused by the collapse of a side rail.

The remainder of the nonfatal injury incidents included:

- Eight injuries caused by broken or detached component parts, such as loose wheels or loose hardware, which resulted in instability or collapse of the product.
- Eight injuries caused by various product-related problems, including sharp surfaces.
- Five injuries related to the mesh or fabric sides of the play yard, such as stitching that unraveled, tears in the fabric, mesh holes that were too large, and mesh material that was too abrasive.
- Five injuries related to the mattress pad or the floor of the play yard. Examples of injuries in this category included: Mattresses or pads that were insufficiently fastened to the play yard floor, resulting in toddlers becoming trapped under the mattress or pad.
- Five injures related to toddlers climbing out or falling out of the play yard. This category included one toddler who was hospitalized for a serious head injury after climbing or falling out of the play yard.
- Four injuries resulted when children were standing in the play yard, lost their balance, and fell.
- Two injuries caused by broken or hazardous accessories, such as dangling straps from changing tables. Other examples of hazardous accessories included: broken or detached components from music boxes, trays, mirrors, and toy holders.
- Two injuries related to assembly errors, including one child who was hospitalized with a severe finger laceration after getting his or her finger caught in the play yard as it was being assembled.
- One injury that resulted in a hospitalization was caused by the presence of soft bedding in the play yard. This was a severe injury to a 7-week-old infant who suffered brain damage.
- One other injury is associated with play yards, but there was insufficient information to determine the cause.

D. Play Yard International Standards and the ASTM Voluntary Standard

Section 104(b)(1)(A) of the CPSIA requires the Commission to consult representatives of ''consumer groups, juvenile product manufacturers, and independent child product engineers and experts'' to ''examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products.'' Through the ASTM process, we consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public. Most of the consultation involved assessing and reviewing the ASTM standard, which is the primary play yard standard in effect in the United States. Significantly, in 2010, in consultation with ASTM, we identified three hazards that were not addressed in the ASTM play yard standard. Those three hazards are now addressed in ASTM 406–11 and include

new requirements to address side rails that collapse into a dangerous V-shape (discussed in section E.5 below); new requirements to address structural failures related to corner brackets (discussed in section E.8 below); and new requirements to address mattress displacement (discussed in section E.10 below).

In addition to reviewing the ASTM standard, we reviewed several international standards.

1. International Standards

We reviewed several international standards when working with ASTM to create ASTM 406–11, including:

- The European Standard, BS EN 12227–1 & 2: 2010, ''Playpens for domestic use'';
- the Australian and New Zealand Standard, AS/NZ S2195: 2010, ''Folding cots—Safety Requirements''; and
- the Canadian standard, C.R.C., c. 932, ''Playpen Regulations.''

We considered the Australian and New Zealand Standard when we, in consultation with ASTM, devised the performance requirement and test method to address V-shape side rail collapses. Ultimately however, CPSC and ASTM chose to use a test method meant to prevent neck entrapment in expansion gates that exists in ASTM F 1004–09, ''Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures.''

We considered the European Standard when we, in consultation with ASTM, devised the performance requirement and test method to address structural failures in corner brackets. Ultimately, the test method found in the European Standard was rejected because its main purpose is to test latch durability, rather than corner post durability. The requirements currently found in ASTM F 406–11 to address this hazard were developed by CPSC staff and are better suited than the requirements in the European Standard to test corner post durability.

We also considered the European Standard when we, in consultation with ASTM, created the mattress displacement performance requirement and test method. While the requirements in ASTM F 406–11 are similar to those in the European Standard, we, in consultation with ASTM staff, made changes that will result in more reliable and repeatable results.

2. The ASTM Voluntary Standard

ASTM F 406 was first approved and published in 1977. ASTM has revised the standard several times since then, with the most current version, ASTM F 406–11, published on May 15, 2011. Historically, one of the most significant changes occurred in ASTM F 406–02, published in June 2002, when the standard for non-full-size cribs merged with the play yard standard to group products with similar uses, and took on its current name, ''Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards.''

The proposed rule would only pertain to play yards. In the **Federal Register** of December 28, 2010 (75 FR 81766), we issued a final rule on safety standards for non-full-size cribs. Thus, the proposed rule would exclude provisions of ASTM F406–11 that apply to non-full-size cribs. The proposed rule would exclude from the play yard standard sections 5.17, 5.19, 5.20, the entirety of section 6, section 8.1 through 8.10.5, and section 10.1.1.1 of ASTM F 406–11. In addition, for section 9.4.2.10 of ASTM F 406–11, we propose to include only the first section, which is a labeling requirement meant to inform consumers that only the mattress or pad provided by the manufacturer should be used. The remainder of section 9.4.2.10 of ASTM F 406–11 is applicable to non-full-size cribs and would be excluded from the play yard standard.

Many play yards include accessory items, such as bassinets or changing tables that attach to the side of the play yard rails. While ASTM F 406–11 contains requirements to address entrapment of children in accessories, such as requirements designed to prevent changing table straps from forming loops that enter the play yard space and could cause strangulation, the specific requirements for accessories will be addressed in separate rulemakings. For example, ASTM F 406–11 addresses possible entrapment in bassinet attachments, but the performance requirements, test methods, and warning provisions for the bassinet itself will be handled in a separate rulemaking.

The key provisions of the current ASTM play yard standard include: Definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature.

Definitions. The definition of ''play yard (aka playpen)'' is a ''framed enclosure that includes a floor and has mesh or fabric- sided panels, primarily intended to provide a play or sleeping environment for children. It may fold for storage or travel.''

General Requirements and Specific Test Methods. The play yard standard contains general requirements that the product must meet, as well as mandated test methods that must be used to ensure that the product meets those requirements, including:

- Requirements for corner posts;
- Restrictions on sharp points and edges (as well as their protective caps), small parts, lead paint, and flammable solids;
- Specifications to prevent scissoring, shearing, and pinching;
- Requirements for toy accessory items;
- Specifications on latching and locking mechanisms;
- Specifications on openings (intended to prevent finger and toe entrapment), labeling (intended to prevent labels from being removed and ingested or aspirated on), coil springs and protrusions;
- Requirements that the play yard be stable;
- Requirements meant to protect a child from entrapment in accessory items, such as a bassinet or changing table, as well as requirements to protect a child from being strangled in a cord or strap that accompanies the product or an accessory item (such as the restraint straps on a changing table); and
- Specifications for the mattress in a play yard.

Performance Requirements and Specific Test Methods. The play yard standard provides performance requirements that the product must meet, as well as mandated test methods that must be used to ensure that the product meets the performance requirements, including:

- A side height requirement (the side of the play yard must be, at least, 20 inches from the top of the noncompressed mattress pad to the top of the side rail);
- Side deflection and strength requirements (the play yard must be able to withstand testing without collapsing, and the hinge and latch mechanisms must remain operational);
- Floor strength requirements;
- Requirements to address the material that covers the top rail, as well as specifications for the mesh or fabric used in play yards;
- Requirements addressing mattress displacement;
- Requirements to eliminate the risk that the side rails will form a dangerous V-shape when collapsed; and
- Requirements addressing corner bracket failures.

Order of Testing. ASTM F 406–11 also addresses the order of testing. ASTM F 406–11 clarifies that the general requirements, such as restrictions on corner posts, must be met both before and after the performance requirement test methods have been completed.

Additionally, ASTM F 406–11 indicates that the tests to determine

compliance with the performance requirements must be conducted in the order specified in the standard because the testing sequence can influence the test results. Therefore, the standard lists tests in a way such that the most potentially destructive tests are performed last.

Marking, Labeling, and Instructional Literature. ASTM F 406–11 has requirements for marking, labeling, and instructions that must accompany a play yard, including warnings regarding proper use of accessory attachment items, and warnings regarding suffocation hazards that may arise if soft bedding is added to the product.

E. Assessment of Voluntary Standard ASTM F 406–11

We considered the fatalities, injuries, and noninjury incidents associated with play yards, and we evaluated the voluntary standard to determine whether ASTM F 406–11 addresses the incident or whether more stringent standards are required that would further reduce the risk of injury associated with the products. We discuss our assessment in this section, but our assessment does not include deaths and injuries associated with play yards where there was insufficient evidence to determine the cause.

1. Unsafe Sleep Environment and Unsafe Sleep Practices

Unsafe sleep environments, such as sleep environments that contain additional or soft bedding, and unsafe sleep practices, such as placing infants to sleep on their stomach instead of their back, resulted in 27 fatalities and one very serious injury that required hospitalization and resulted in brain damage to the child. Unsafe sleep environments and unsafe sleep practices are not attributable to the design or construction of play yards. ASTM F 406–11 includes product warnings that address the hazards of soft bedding and the hazards associated with placing a child to sleep on their stomach. We do not believe that there are additional requirements that can be put in place in the standard to address unsafe sleep environments and unsafe sleep practices.

2. Hazardous Surroundings

Ten suffocation deaths were attributable to unsafe environments around the play yard. Examples of hazardous surroundings include: Window blind cords and computer cords that fall into a play yard, forming a loop, and causing strangulations. Other deaths were caused when caregivers placed an object on top of the play yard to keep the child in the play yard, and fatalities resulted when children tried to climb out of the play yard and became trapped between the cover and the side rail. Risks due to hazardous surroundings are not attributable to the design or construction of play yards. ASTM F 406–11 includes product warnings that address the dangers of placing a product near windows where cords can cause strangulation. ASTM F 406–11 also includes a warning about the dangers of using improvised netting or covers over play yards. We do not believe that there are additional requirements that can be put in place in the standard to address this issue.

3. Risks Associated With Children Climbing Out or Falling Out of a Play Yard

Two children were killed when they were able to climb out or they fell out of their play yard and accessed a pool. Both children drowned. Additionally, five children were injured after climbing or falling out of their play yard, including one injury that resulted in a serious head injury and required hospitalization.

We considered alternatives that might make it less likely that a child could climb or fall out of a play yard. For example, play yards could be mandated to have higher sides, or manufacturers could provide a ''lid'' or cover to the play yard. However, in both cases, we felt that these solutions might create additional hazards. Higher sides might make it more difficult for a caregiver to put the child inside the play yard and might increase the chance that caregivers will find alternative, but less safe, sleep environments (such as allowing infants to sleep in adult beds). Requiring a lid or cover increases the chances that the lid or cover will fail in some way, allowing children to attempt to climb out of the product, only to become stuck between the lid and the side rail, which could cause suffocation.

Therefore, we determined that warnings are the most appropriate way to address climb-out and fall-out hazards. ASTM F 406–11 includes product warnings indicating that play yards are designed for children who are not able to climb out of the play yard. There are additional warning requirements regarding removing any object that can serve as a step that would enable a child to climb out of the play yard. We do not believe that there are additional requirements that can be put in place in the standard to address this issue.

4. Standing/Choking Deaths

Two toddlers were killed in a similar, but currently unexplained, manner. In both situations, the toddler stood up in the play yard and placed his or her neck against the side rail. In both situations, it is believed that they leaned forward against the side rail (possibly to reach an object that the child had thrown outside the play yard), lost consciousness, and suffocated when the pressure from the side rail compressed the airway. We have investigated both deaths and believe that further review by CPSC staff is warranted to determine if the design or construction of the play yard contributed to the deaths. If we conclude that the design or construction of the play yard did contribute to these deaths, we will determine whether additional requirements are necessary. Because the causation of these incidents is unclear, we are not proposing additional requirements in the standard to address the possibility of standing/choking deaths at this time.

5. Side Rail Collapse

One child was killed when a play yard's side rails collapsed, trapping the child and resulting in suffocation. Additionally, 124 of the 165 nonfatal injury reports are attributable to side rail collapse. One injury required hospitalization for a concussion. The largest number of nonfatal incident reports (1,902 out of 2,079 reports) are attributable to play yard side rail collapse. We reviewed these incidents and have determined that the majority are caused by failure of the side rail latch that keeps the side rail locked and in place.

Side collapse issues were addressed significantly in 1997, in ASTM F 406–97, which required the side rails of play yards to have a locking device in order to prevent the center hinge from collapsing and causing the side rail to fall. In 1999, ASTM added a test method that required the locking mechanism on the side rail hinges to withstand a force of 100 pounds, applied diagonally, without breaking or disengaging.

In August 2009, after a significant number of recalls involving side collapse issues, ASTM published ASTM F 406–09, which included, for the first time, a false latch test in the ASTM play yard standard. The addition of the false latch test was designed to ensure that the top rail does not give the appearance of being locked, when, in fact, the locking device is not engaged completely.

The recalls related to side collapse, which prompted the change in the 2009 ASTM standard include:

• A January 2009 recall of 200,000 play yards. The CPSC press release can be found here: *http://www.cpsc.gov/cpscpub/prerel/prhtml09/09098.html.*

• An April 2009 recall of 25,000 play yards. The CPSC press release can be found here: *http://www.cpsc.gov/cpscpub/prerel/prhtml09/09187.html.*

• A July 2009 recall of about 1 million play yards. The CPSC press release can be found here: *http://www.cpsc.gov/cpscpub/prerel/prhtml09/09265.html.*

Additionally, ASTM F 406–11 includes a performance requirement and test method that addresses a side rail collapse issue that was a problem in the past but was never adequately addressed in past editions of the ASTM play yard standard. In brief, when folding play yards were relatively new products in the 1990s, some products did not include features designed to prevent unintentional collapse of the side rails. Some play yards collapsed into a V-shape. If a child's neck is caught in the V-shape, the child could suffocate. Most producers of play yards chose to stop designing products that could form a V-shape when the side rails collapsed. The ASTM standard, however, was not revised to ban this design. According to a CPSC press release, originally issued on August 21, 1998, and last revised on May 10, 2004, 13 children died from suffocation in play yards where the side rail collapsed into a V-shape. (These fatalities are not included in the list of incident data referenced throughout this document because they pre-date the creation of the Early Warning System database [the database used to support the regulatory work here]). The press release also mentioned that more than 1.5 million play yards with this dangerous design flaw have been recalled in past years. The press release can be found at: *http://www.cpsc.gov/cpscpub/prerel/prhtml98/98156.html.*

Thus, after a review of the incidents, as well as an assessment of the locking and latching provisions, the false latch provision, and the new provisions meant to prevent a side collapse that results in a V-shape, we determined that these performance requirements and test methods are sufficient to address play yard side rail collapse issues. Thus, we are not proposing additional requirements at this time.

6. Hazards Related to Accessories

Play yards often are sold with accessory items, such as changing tables and bassinets, which are meant to attach to the side rails of the play yard. One child was killed when a dangling strap from a changing table accessory formed a loop inside the occupant area of the play yard, resulting in the child's strangulation. The play yard involved in the fatality prompted a recall of 425,000 play yards. That recall was issued on September 27, 2007. The CPSC press release for the recall can be viewed at: *http://www.cpsc.gov/cpscpub/prerel/prhtml07/07315.html.* Additionally, there were two injuries caused by broken or hazardous accessories.

In 2005, ASTM published ASTM F 406–05a, which included a section to address entrapment in accessories. The requirement and the accompanying test method were designed to ensure that accessories cannot create openings that can entrap a child's head. In 2008, ASTM published ASTM F 406–08, which included a provision that prohibits the use on an accessory of cords and straps that are capable of forming a loop that could strangle a child. The 2008 ASTM standard also added requirements for toy attachments intended to address incidents related to broken or detached components from music boxes, mirrors, and toy holders.

We believe that these requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

7. Assembly Errors

One fatality and two injuries are attributable to assembly errors. The death occurred when the mattress pad of the play yard was not completely secured to the floor of the play yard. The child suffocated in the pocket created between the unsecured pad and the floor of the product.

An assembly error was the cause of one very serious injury, which required a hospitalization and occurred when a child got his or her finger caught in the gap between the corner bracket and the side rail of the play yard as it was being assembled. The child suffered a severe laceration that required medical attention.

ASTM F 406–11 contains provisions requiring clear, easy-to-read assembly instructions. We believe that these requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

8. Broken or Detached Component Parts Leading to Structural Failures

Eight injuries, including bruises and cuts, were caused by broken or detached component parts, such as loose wheels or loose hardware, which led lead to the product becoming unstable or collapsing. Most incidents involved structural failure at the corner brackets of the play yard, resulting in rivets pulling through the corner brackets, cracking of the plastic under the rivets' heads, and rivets and plastic pieces falling out of the corner bracket. This causes the play yard to collapse.

We believe corner post failures are caused by repeated loading of the side rails by one of the following methods:

• Caregivers inadvertently and repeatedly leaning on the side rails to reach the child or to use the bassinet or changing table accessory;

• Children who use the side rails for support while standing; and/or

• Accessories that are attached to and removed repeatedly from the side rails and corner posts.

In 2010, CPSC staff recommended a new performance requirement and test method to address this hazard, which was included for the first time in ASTM F 406–11. We believe that these requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

9. Mesh and Fabric Sides

Five injuries are related to the mesh or fabric sides of the play yard, such as stitching that unraveled, tears in the fabric, mesh holes that were too large and caught an infant's tooth, and mesh material that was too abrasive.

ASTM F 406–11 contains several performance requirements and test methods to address hazards caused by mesh or fabric. We believe that these requirements are sufficient to address the associated hazards, and we are not proposing additional requirements at this time.

10. Mattress Pad or Play Yard Floor Hazards

Five injuries are attributable to problems with the mattress pad or floor of the play yard. Most of these incidents are related to mattress displacement, which occurs when children are able to pull up the mattress and become trapped between the floor of the play yard and the mattress. The mattress of most play yards is attached to the product by hook and loop straps, commonly referred to as ''Velcro'' straps. The other commonly used method is a ''Velcro'' patch.

ASTM F 406–11 includes a performance requirement and a test method that would require a play yard mattress to be able to withstand a certain amount of force before it can be lifted high enough to allow a child to become trapped between the mattress and the play yard floor. We believe that these requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

11. Impact on Play Yard

There were four injuries that occurred in play yards because children were standing up in a play yard, lost their balance, and fell. ASTM F 406–11 does include product warnings that address the need to provide supervision, as necessary, when the child is in the product, particularly when the child is playing in the play yard. We believe that these requirements are sufficient, and we are not proposing additional requirements at this time.

12. Other Product-Related Concerns

Eight injuries were caused by other product-related problems, such as sharp surfaces. For the incidents where we could determine the problem's cause, we believe that the current requirements are sufficient to address these hazards, and we are not proposing additional requirements at this time.

F. Description of Proposed Changes to ASTM Standard

The proposed rule would create a new part 1221 titled, ''Safety Standard for Play Yards.'' The proposal would establish ASTM F 406–11, ''Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards,'' as a consumer product safety standard, but with certain changes. We are proposing three changes to ASTM F 406–11, as it applies to play yards. The provisions of ASTM 406–11 that apply to non-full-size cribs have been excluded because those products are addressed in a separate rulemaking.

Two of the three proposed changes would clarify the existing provisions. Clarification will reduce potential misinterpretations that could result in improper testing. Thus, these clarifications will strengthen the standard and reduce the risk of injury by ensuring that play yard testing is performed properly.

The last proposed change would affect the test method for determining the strength of corner brackets. The method in ASTM F406–11 currently requires the tester to use a specific size clamp. The proposed change would allow the tester some flexibility, within a carefully selected range, in choosing the clamp to account for play yards with hinges that vary in size. By allowing the tester to choose the most appropriate clamp, we are strengthening the standard and reducing the risk of injury by ensuring that the appropriate testing equipment is used. Using the most appropriate testing equipment will ensure that the test is performed properly and that only the safest play yards will pass laboratory testing and enter the market.

We describe these proposed changes immediately below:

1. Clarifying the Equipment Needed To Perform the Floor Strength Test (Section 8.12.1)

Currently, ASTM F 406–11 contains a performance standard to measure the floor strength of a play yard. Section 8.12.1 of ASTM F 406–11 specifies the use of a ''Wood block, 6 by 6 in. (150 by 150 mm).'' However, the test method in ASTM F 406–11 requires the use of two wood blocks to test the floor strength of the play yard. The proposed rule, therefore, would clarify that ''2 Wood blocks'' are needed.

2. Clarifying the Floor Strength Test Method (Section 8.12.2.1)

The current text of the test method for measuring the floor strength of play yards states that the tester must ''(p)lace a 50-lb (23-kg) and a 30-lb (14-kg) weight each onto a 6 by 6-in. (150 by 150-mm) wood block spaced 6 +/− ½ in. (150 +\−13 mm) apart and maintain for 60s.'' The proposed rule would simplify this sentence by dividing it into three sentences by replacing it with the following: ''Place the wood blocks 6 +/− ½ inch (150 mm +/− 13 mm) apart. Place 50-lb (23-kg) weight on one wood block and a 30 lb (24 kg) weight on the other wood block. Maintain for 60 s.'' This revision also clarifies that the wood blocks should be put into position before the weight is applied.

3. The Shape and Area of the Clamping Surface for the ''Top Rail to Corner Post Attachment Test'' (Section 8.30.3.1)

Currently, ASTM F 406–11 contains a performance standard to address the structural failure of corner brackets of play yards. The test method directs the tester to use clamps to apply a twisting motion to the rail, which strains the corner brackets. The product will fail the test if, for example, there is cracking of the corner brackets. The current test method specifies the shape and area of the clamping surfaces (2 by 2 in.). The proposed rule would allow the tester to choose the shape and area of the clamping surface, within a specified range (1-square-inch to 4 square inches) to accommodate the variety of hinge latching devices in different models of play yards.

4. Exclusion of ASTM F 406–11 Sections That Are Applicable to Non-Rull-Size Cribs

The proposed rule would pertain only to play yards. In the **Federal Register** of December 28, 2010 (75 FR 81766), we issued a final rule on safety standards for non-full-size cribs. Thus, the proposed rule would exclude the provisions of ASTM F406–11 that apply to non-full-size cribs. Specifically, the proposal would exclude sections 5.17, 5.19, 5.20, the entirety of section 6, section 8.1 through 8.10.5, and section 10.1.1.1 of ASTM F 406–11. In addition, for section 9.4.2.10 of ASTM F 406–11, the proposal would include only the first section, which is a labeling requirement meant to inform consumers that only the mattress or pad provided by the manufacturer should be used. The remainder of section 9.4.2.10 of ASTM F 406–11 is applicable to non-full-size cribs, and it would be excluded from the play yard standard.

G. Effective Date

The Administrative Procedure Act (''APA'') generally requires that the effective date of the rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). To allow time for play yards to come into compliance, we intend for the standard to become effective 6 months after the publication of the final rule in the **Federal Register**. We invite comment on how long it will take play yard manufacturers to come into compliance.

H. Regulatory Flexibility Act

1. Introduction

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires agencies to consider the impact of proposed rules on small entities, including small businesses. Section 603 of the RFA requires that we prepare an initial regulatory flexibility analysis and make it available to the public for comment when the notice of proposed rulemaking is published. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small entities and identify any alternatives that may reduce the impact. Specifically, the initial regulatory flexibility analysis must contain:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records; and

• An identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, the initial regulatory flexibility analysis must contain a description of any significant alternatives to the proposed rule that would accomplish the stated objectives of the proposed rule and, at the same time, reduce the economic impact on small businesses.

2. The Market

Based on a 2005 survey conducted by American Baby Group titled, ''2006 Baby Products Tracking Study'' and Centers for Disease Control and Prevention birth data, we estimate that approximately 2.9 million play yards are sold in the United States each year. We estimate that there are at least 23 manufacturers or importers supplying play yards to the United States market. Eleven of these firms are domestic manufacturers, and 10 of these firms are domestic importers. Two of the firms are foreign importers.

Under the U.S. Small Business Administration (''SBA'') guidelines, a manufacturer of play yards is small if it has 500 or fewer employees, and an importer is considered small if it has 100 or fewer employees. Based on these guidelines, 10 domestic manufacturers and all 10 of the domestic importers known to supply play yards to the U.S. market are small businesses. The remaining entities include a large domestic manufacturer and two foreign importers. There may be additional unknown small manufacturers and importers operating in the U.S. market.

The Juvenile Product Manufacturers Association (''JPMA'') runs a voluntary certification program for juvenile products. Certification under the JPMA program is based on the ASTM voluntary play yard standard. Eleven of the 23 manufacturers or importers have been certified as compliant with the ASTM voluntary play yard standard by the JPMA. Three additional manufacturers or importers claim to comply with the ASTM voluntary play yard standard, but they do not participate in the JPMA certification program. In some cases, these three manufacturers or importers may provide test results on-line. Seven small domestic manufacturers supplying play yards to the U.S. market claim to comply with the ASTM voluntary play yard standard. Of the importers, six claim to comply with the ASTM voluntary play yard standard.

3. Impact of the Proposal on Small Business

Section 104 of the CPSIA requires the CPSC to promulgate standards for durable infant or toddler products, including play yards. The impact of this rulemaking, if finalized, could have a significant impact on several small manufacturers and importers whose play yards are not ASTM-compliant. The impact of the proposed standard on small manufacturers and importers will differ, based on whether their products are already in compliance with the ASTM voluntary play yard standard.

Of the 10 small domestic manufacturers, seven produce play yards that are certified as compliant by JPMA or claim to be in compliance with the voluntary standard. There will be little or no impact on these firms. The three noncompliant manufacturers may need to modify their product substantially to meet the ASTM standard. The costs associated with these modifications might include product redesign. The redesign could be minor if, for example, the manufacturer needs to use additional or different fabric or mesh. However, the changes could be more significant if a redesign of the product frame is required. The impact of these costs may be mitigated if they are treated as new product expenses and amortized.

Of the 10 small domestic importers, six import play yards that are certified as compliant by JPMA or claim to be in compliance with the voluntary standard. The four noncompliant importers may need to find an alternative source if their existing supplier does not modify their play yards to comply with the standard. However, the impact of that decision could be mitigated by replacing the noncompliant product with a compliant product made by a different manufacturer. Deciding to import an alternative product would be a reasonable and realistic way to offset any lost revenue.

Two of the noncompliant importers import products from a specific foreign country. For these entities, finding an alternative supply source may not be an option. However, they could stop importing noncompliant play yards and replace them with other juvenile products.

The information in this section assumes that three domestic manufacturers and four domestic importers do not comply with the voluntary standard. This may not be the case. We have identified many cases where products that are not certified by JPMA, or do not otherwise claim compliance with the voluntary standard, actually meet the relevant standard. To the extent that this is true, the impact of the proposed rule will be less significant than described.

4. Alternatives

For the 13 small domestic entities that already comply with the voluntary standard, there are few or no costs associated with the three minor changes being proposed. For the seven small domestic entities that are not compliant (or where it is unknown if they are compliant) the adoption of the voluntary standard as a mandatory consumer product safety standard could result in substantial costs.

For these entities, setting an effective date longer than 6 months could reduce the impact. This would allow small manufacturers additional time to make necessary changes to their product, and it would allow small importers to find alternative sources. It would also allow entities to spread costs over a longer period of time.

5. Conclusion of Initial Regulatory Flexibility Analysis

It is possible that the proposed standard, if finalized, could have a significant impact on some small businesses whose play yards are not ASTM-compliant. The extent of these costs is unknown. For manufacturers of noncompliant play yards, product redesign might be necessary, and it is possible that the costs could be large for some entities. Importers may need to find alternative sources of play yards. Additionally, all manufacturers and importers will eventually be subject to third party testing and certification requirements, as discussed in section L below.

We invite comments describing the possible impact of this rule on manufacturers and importers, as well as comments containing other information describing how this rule will affect small businesses.

I. Environmental Considerations

The Commission's regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. If our rule has ''little or no potential for affecting the human environment'' it will be categorically exempted from this requirement. 16 CFR 1021.5(c)(1). The proposed rule falls within the categorical exemption.

J. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and

review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;
- A description of the likely respondents and proposed frequency of response to the collection of information;
- An estimate of the burden that shall result from the collection of information; and
- Notice that comments may be submitted to the OMB.

Title: Safety Standard for Play Yards.

Description: The proposed rule would require each play yard to comply with ASTM F 406–11, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards. Sections 9 and 10 of ASTM F 406–11 contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import play yards.

Estimated Burden: We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1221.2(a)	9	3	27	1	27

Our estimates are based on the following:

Section 9.1.1.1 of ASTM F 406–11 requires that the name and the place of business (city, state, mailing address, including zip code, or telephone number) of the manufacturer, distributor, or seller be marked clearly and legibly on each product and its retail package. Section 9.1.1.2 of ASTM F 406–11 requires a code mark or other means that identifies the date (month and year, as a minimum) of manufacture.

There are 23 known entities supplying play yards to the U.S. market. Fourteen entities produce labels that comply with the standard. Thus, there would be no additional burden on these entities. Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' Therefore, because these 14 entities already produce labels that comply with the standard, we tentatively estimate that there are no burden hours associated with Sections 9.1.1.1 and 9.1.1.2 of ASTM F 406–11 because any burden associated with supplying these labels would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations.

We assume that the remaining nine entities use labels on their products and their packaging but might need to modify their existing labels. The estimated time required to make these modifications is about 1 hour per model. Each entity supplies an average of three different models of play yards; therefore, the estimated burden hours associated with labels is 1 hour per model × 9 entities × 3 models per entity = 27 hours.

We estimate that the hourly compensation for the time required to create and update labels is $27.98. This is based on data from March 2011, provided by the U.S. Bureau of Labor Statistics. The information is available at: *http://www.bls.gov/news.release/pdf/ecec/pdf* in Table 9, under the heading ''all workers, goods-producing industries'' and the subheading ''sales and office.'' Therefore, the estimated annual cost to industry associated with the proposed labeling requirements is $755.46 ($27.98 per hour × 27 hours = $755.46).

Section 10.1 of ASTM F 406–11 requires instructions to be supplied with the product. Play yards are products that generally require assembly, and products sold without such information would not be able to compete successfully with products supplying this information. Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' Therefore, because we are unaware of play yards that generally require some installation, but lack any instructions to the user about such installation, we tentatively estimate that there are no burden hours associated with section 10.1 of ASTM F 406–11 because any burden associated with supplying instructions with play yards would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations.

Based on this analysis, the proposed standard for play yards would impose a burden to industry of 27 hours at a cost of $755.46 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by October 20, 2011, to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- The accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates.

K. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either

establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules,'' thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

L. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As discussed in section A of this preamble, section 104(b)(1)(B) of the CPSIA refers to standards issued under this section as ''consumer product safety standards.'' Similarly, such standards also would be subject to section 14 of the CPSA. Therefore, any such standard would be considered a ''consumer product safety rule'' to which products subject to the rule must be certified.

Because play yards are children's products, they must be tested by a third party conformity assessment body whose accreditation is accepted by the Commission. In the future, the Commission will issue a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test play yards to the new safety standard. (Play yards also must comply with all other applicable CPSC requirements, such as the lead content and phthalate content requirements in section 101 and 108 of CPSIA respectively; the tracking label requirement in section 14(a)(5) of the CPSA; and the consumer registration form requirements in section 104 of the CPSIA.)

M. Request for Comments

This proposed rule begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for play yards. We invite all interested persons to submit comments on any aspect of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects in 16 CFR Part 1221

Consumer protection, Imports, Incorporation by reference, Infants and Children, Labeling, Law enforcement, and Toys.

Therefore, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding a new part 1221 to read as follows:

PART 1221—SAFETY STANDARD FOR PLAY YARDS

Sec.
1221.1 Scope.
1221.2 Requirements for play yards.

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008).

§ 1221.1 Scope.

This part establishes a consumer product safety standard for play yards.

§ 1221.2 Requirements for Play Yards.

(a) Except as provided in paragraph (b) of this section, each play yard must comply with all applicable provisions of ASTM F 406–11, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, approved on May 15, 2011. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/cpsc.htm.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html.*

(b) Comply with the ASTM F 406–11 standard with the following additions or exclusions:

(1) Do not comply with section 5.17 of ASTM F 406–11.

(2) Do not comply with section 5.19 of ASTM F 406–11.

(3) Do not comply with section 5.20 of ASTM F 406–11.

(4) Do not comply with section 6, Performance Requirements for Rigid Sided Products, of ASTM F 406–11, in its entirety.

(5) Do not comply with sections 8.1 through 8.10.5 of ASTM F 406–11.

(6) Instead of complying with section 8.12.1 of ASTM F 406–11, comply with the following:

(i) 8.12.1 *Equipment* – 2 Wood blocks, 6 by 6 in. (150 by 150 mm).

(7) Instead of complying with section 8.12.2.1 of ASTM F 406–11, comply with the following:

(i) 8.12.2.1 Remove cushions that are not part of the floor or mattress support. Place the wood blocks 6 +/− ½ inch (150 mm +/− 13 mm) apart. Place 50-lb (23-kg) weight on one wood block and a 30- lb (24 kg) weight on the other wood block. Maintain for 60 s. Perform the test in those locations deemed to be the weakest or the most likely to fail. Remove the load and check for structural failure.

(8) Instead of complying with section 8.30.3.1 of ASTM F 406–11, comply with the following:

(i) 8.30.3.1 Mount a rigid and substantially horizontal moment arm weighing less than 5 lb (2.2 kg) to the hinge/latching device at the longitudinal center of the top rail through two clamping surfaces, each 1 in^2–4 in^2 (6.5 cm^2–26 cm^2) designed to firmly grasp the hinge latching device. The moment arm shall be at least 24 in (603 mm) long and extend towards the outside of the play yard.

(9) Instead of complying with section 9.4.2.10 of ASTM F 406–11, comply with only the following:

(i) 9.4.2.10 For products that have a separate mattress that is not permanently fixed in place:

Use ONLY mattress/pad provided by manufacturer.

(10) Do not comply with section 10.1.1.1 of ASTM F 406–11.

Dated: September 15, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–24101 Filed 9–19–11; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AC96; 3038–AC97

Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements Under Section 4s of the CEA

AGENCY: Commodity Futures Trading Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations that would establish a schedule to phase in compliance with previously proposed requirements, including the swap trading relationship documentation requirement under proposed 17 CFR 23.504, 76 FR 6715 (Feb. 8, 2011) and the margin requirements for uncleared swaps under proposed 17 CFR 23.150 through 23.158, 76 FR 23732 (Apr. 28, 2011). This release is a continuation of those rulemakings. The proposed schedules would provide relief in the form of additional time for compliance with these requirements. This relief is intended to facilitate the transition to the new regulatory regime established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions. The Commission is requesting comment on the proposed compliance schedules, §§ 23.175 and 23.575, described in this release.

DATES: Submit comments on or before November 4, 2011.

ADDRESSES: For comments on proposed compliance schedule § 23.175, you may submit comments identified by RIN number 3038–AC97 and Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the Commodity Exchange Act (CEA). For comments on proposed compliance schedule § 23.575, you may submit comments identified by RIN number 3038–AC96 and Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA. Comments may be submitted by any of the following methods:

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Mark D. Higgins, Counsel, Office of the General Counsel, 202–418–5864, *mhiggins@cftc.gov;* or Camden Nunery, Office of the Chief Economist, *cnunnery@cftc.gov,* 202–418–5723, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1] Title VII of the Dodd-Frank Act amends the CEA [2] to establish a comprehensive new regulatory framework for swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the rulemaking and enforcement authorities of the Commission with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

To implement the Dodd-Frank Act, the Commission has to-date issued 55 advance notices of proposed rulemaking or notices of proposed rulemaking, two interim final rules, 12 final rules, and one proposed interpretive order. By the beginning of May 2011, the Commission had published in the **Federal Register** a significant number of notices of proposed rulemaking, which represented a substantially complete mosaic of the Commission's proposed regulatory framework under Title VII. In recognition of that fact and with the goal of giving market participants additional time to comment on the proposed new regulatory framework for swaps, either in part or as a whole, the Commission reopened or extended the comment period of many of its proposed rulemakings through June 3, 2011.[3] In total, the Commission has received over 20,000 comments in response to its Dodd-Frank Act rulemaking proposals.

To give the public an opportunity to comment further on implementation phasing, on May 2–3, 2011, the Commission, along with the Securities and Exchange Commission (SEC), held a joint, two-day roundtable on issues related to implementation.[4] In connection with this roundtable, Commission staff proposed thirteen concepts to be considered regarding implementation phasing, and staff asked a series of questions based on the concepts outlined.[5] The Commission has received numerous comments in

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] *See* Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 25274, May 4, 2011.

[4] The transcripts from the roundtable are *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050311.pdf* (''Day 1 Roundtable Tr.'') and *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050211.pdf* (''Day 2 Roundtable Tr.'').

[5] *See* ''CFTC Staff Concepts and Questions Regarding Phased Implementation of Effective Dates for Final Dodd-Frank Rules,'' *available at http://cftc.gov/ucm/groups/public/@newsroom/documents/file/staffconcepts050211.pdf.*

response to both its roundtable and the staff concepts and questions.[6]

These comments have come from a variety of existing and potential market infrastructures, such as clearinghouses, trading platforms, and swap data repositories. Comments also have come from entities that may potentially be swap dealers (SDs) or major swap participants (MSPs), as well as those financial entities that may not be required to register with the Commission, but whose swap transactions may have to be conducted in compliance with certain requirements under Section 4s of the CEA by virtue of their trading with registered SDs or MSPs. For example, the swap transactions between SDs or MSPs and their counterparties will be subject to certain documentation of trading and margining requirements as proposed by the Commission in ''Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,'' 76 FR 6715 (Feb. 8, 2011),[7] (hereinafter ''Trading Documentation'') and ''Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,'' 76 FR 23732 (Apr. 28, 2011) (hereinafter ''Margin Requirements'').[8]

One of the key themes to emerge from the comments received by the Commission is that some market participants may require more time to ensure that their swap transactions comply with certain new regulatory requirements that will apply when they enter into swap transactions with registered SDs and MSPs.[9] For example, one commenter requested a ''meaningful'' period after finalization of the suite of rulemakings that is applicable to it before actual compliance will be required.[10] Similarly, several trade associations recommended the Commission allow ''sufficient'' time for infrastructure and business practices to develop before requiring compliance with the new requirements.[11] A group of international banks commented that the Commission should defer compliance until December 31, 2012, at which point the regulatory timetable as per the September 2009 G20 Pittsburgh statement will have reached a conclusion.[12] Another commenter noted that some entities may be able to comply relatively quickly with certain documentation requirements that are largely consistent with current business practices while other requirements may need a longer implementation period.[13] Although commenters varied in their recommendations regarding the time it would take to bring their swaps into compliance with the new regulatory requirements, many commenters agreed on phasing in compliance with these requirements by type of market participant based on a variety of factors, including a market participant's experience, resources, and the size and complexity of its transactions.[14] The Commission has taken these comments into consideration in developing these proposed compliance schedules.

The swap transaction compliance requirements that are the focus of this proposed rulemaking include compliance with certain provisions of the Trading Documentation and Margin Requirements under Section 4s of the CEA.[15] The Commission's proposed compliance schedules are designed to afford affected market participants a reasonable amount of time to bring their transactions into compliance with such requirements. The proposed schedules also would provide relief in the form of additional time for compliance with these transaction compliance requirements and are further explained below. This relief is intended to facilitate the transition to the new regulatory regime established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions.

Under this further notice of proposed rulemaking, the Commission is seeking additional public comment on proposed compliance schedules that ultimately would be included in final rules regarding Trading Documentation and Margin Requirements.[16] The proposed schedules would be finalized and become effective at such time as the final Trading Documentation and Margin Requirement rules were published in the **Federal Register**.

II. Proposed Regulation

A. Authority To Implement Proposed Regulations

In this further notice of proposed rulemaking, the Commission relies on its general authority to phase in compliance with the rules and regulations enacted pursuant to the Dodd-Frank Act. Section 712(f) of Title VII also authorizes the Commission to promulgate rules to prepare for the effective dates of the provisions of the Dodd-Frank Act.[17] In addition, the Commission relies on Section 8(a)(5) of the CEA, which authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. In accordance with this authority, the proposed regulations would amend part 23 of the Commission's regulations to phase compliance with previously proposed rules related to Trading Documentation and Margin Requirements under Section 4s of the CEA.

B. Implementation Phasing of Trading Documentation Under Section 4s(i) of the CEA

1. Background on the Trading Documentation Requirement

Section 731 of the Dodd-Frank Act added a new Section 4s(i)(2) to the CEA that requires the Commission to adopt rules governing documentation standards for SDs and MSPs. As described in Section 4s(i)(1), these documentation standards, as prescribed by the Commission, ''relate to the timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.'' On January 13, 2011, the Commission proposed regulations related to the Trading Documentation that SDs and MSPs must enter into with their counterparties in order to establish a swap trading relationship and document the swap transactions that occur pursuant to that relationship.[18]

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[6] Such comments are *available at http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1000.*

[7] CFTC Docket 3038–AC96.

[8] CFTC Docket 3038–AC97.

[9] E.g., Letter from Electric Trade Association, dated May 4, 2011 at 5; Letter from John R. Gidman, Association of Institutional Investors, dated June 10, 2011 at 3–4.

[10] Letter from the Coalition of Physical Energy Companies, dated Mar. 14, 2011 at 4.

[11] Letter from the Futures Industry Association, the Financial Services Forum, the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association, dated May 4, 2011 at 5.

[12] Letter from the Bank of Tokyo-Mitsubishi UFJ, Ltd., et al., dated May 6, 2011 at 6.

[13] Letter from the Financial Services Roundtable, dated May 12, 2011 at 4.

[14] These comments are more fully discussed later in the preamble.

[15] The Commission also is proposing Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA.

[16] This release should be considered to be a continuation of the rulemaking undertaken by CFTC Dockets 3038–AC96 and 3038–AC97. Only comments pertaining to the proposed compliance schedule will be considered as part of this Further Notice.

[17] Section 712(f) of the Dodd-Frank Act states: ''Beginning on the date of enactment of this Act and notwithstanding the effective date of any provision of this Act, the [Commission] * * * may, in order to prepare for the effective dates of the provisions of this Act—(1) promulgate rules, regulations, or orders permitted or required by this Act * * *.''

[18] *See* Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715, Feb. 8, 2011.

Specifically, previously proposed § 23.504(a) would require SDs and MSPs to establish, maintain, and enforce written policies and procedures designed to ensure that each SD or MSP and its counterparty agree in writing to all terms of their swap trading relationship and have executed all agreements required by the rules.[19] The proposal also would address the essential documentation needed to establish a trading relationship with a registered SD or MSP. Proposed § 23.504(b)(1) would require that the trading documentation include written agreement by the parties on terms relating to payment obligations, netting of payments, events of default or other termination events, netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution procedures.[20] Proposed § 23.504(b)(2) would establish that all confirmations of swap transactions, as required under proposed § 23.501, would be considered to be part of the required swap trading relationship documents.[21]

Proposed § 23.504(b)(3) would require that the trading documentation include documentation of the credit support arrangements between the counterparties. These arrangements would include the counterparties' agreement on initial and variation margin requirements,[22] the types of assets that may be used as margin, and the investment and rehypothecation terms for those assets. The proposal also would include the custodial arrangements for margin assets, including whether margin assets are to be segregated with an independent third party in accordance with Section 4s(l) of the CEA.[23]

Proposed § 23.504(b)(4) would require that a SD or MSP and its counterparty agree on how they will value each swap transaction into which they enter from the point of execution until the termination, maturity, or expiration of the swap.[24] Proposed § 23.504(b)(6) would establish certain documentation requirements for bilaterally-executed swaps that are subsequently submitted for clearing to a DCO. Finally, proposed § 23.504(b)(5), the subject of a separate notice of proposed rulemaking,[25] would require that a SD or MSP and its counterparty include in their Trading Documentation ''a provision that confirms both parties' understanding of how the new orderly liquidation authority under the Title II of the Dodd-Frank Act and the Federal Deposit Insurance Act may affect their portfolios of uncleared, bilateral swaps.'' [26]

The audit, recordkeeping, and reporting provisions of proposed § 23.504(c), (d), and (e) that were proposed by the Commission at the same time as proposed § 23.504(a) and (b) would not be subject to the compliance schedule proposed below because the Commission believes that compliance with those requirements rests solely with registered SDs and MSPs and would not require that SDs or MSPs work with their non-registrant counterparties to comply with these requirements.[27] The Commission solicits comment on whether the compliance schedule should be applied to these provisions as well. The Commission also solicits comment regarding whether the compliance schedule should be applied to proposed § 23.505, which relates to end-user exception documentation.

The Commission observes that before swap dealers and major swap participants could be required to comply with § 23.504, the Commission must adopt final rules related to confirmation of swap transactions [28] and the protection of collateral for uncleared swaps.[29] This is because the substance of the required documentation under proposed § 23.504 is found in those two rulemakings. For this reason, the Commission anticipates that it will finalize the confirmation and protection of collateral proposals at approximately the same time that it finalizes the Trading Documentation rule. Consequently, the compliance schedules proposed under this release would not become effective until the Commission finalizes those two proposals in addition to the Trading Documentation rule.[30]

In addition, the Commission recognizes that the swap transaction compliance schedules that are the subject of this proposal reference terms such as ''swap,'' ''swap dealer,'' and ''major swap participant'' that are the subject of rulemaking under sections 712(d)(1) and 721(c) of the Dodd-Frank

[19] 76 FR at 6725.

[20] 76 FR at 6726. In large part, proposed § 23.504(b)(1) reflects existing trading relationship documentation between counterparties, such as the widely-used ISDA Master Agreement, but does propose additional documentation requirements.

[21] 76 FR at 6717 and 6726. In particular, under proposed § 23.504(b)(2) parties must document the confirmation of their swap transactions. The Commission proposed the timing requirements for confirmation under § 23.501 in Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, Dec. 28, 2010. However, the writing necessary for confirmation is required pursuant to § 23.504(b)(2) and was proposed under the Trading Documentation rules.

[22] *See* section II.C below for further discussion of Margin Requirements. Proposed § 23.504(b)(3)(i)–(iii) is intended to work together with, and serve as a cross-reference to, rules proposed by the Commission in its Margin Requirements proposal, § 23.151 (76 FR at 23744), as well as rules proposed by the prudential regulators related to initial and variation margin requirements for SDs and MSPs that are banks. *See* Margin and Capital Requirements for Covered Swap Entities, 76 FR 27564, 27589, May 11, 2011 (proposing § _.5 relating to documentation of margin matters). While proposed § 23.504 would apply to all SDs and MSPs registered with the Commission, the specific initial and variation margin requirements for SDs or MSPs would depend on whether the entity has a prudential regulator as that term is defined under Section 1a(39) of the CEA.

[23] As explained in the preamble to the Trading Documentation proposal, proposed § 23.504(b)(3)(iii) and (iv) are intended to work together with rules proposed under section 4s(l) of the CEA. 76 FR at 6718 (citing Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 75 FR 75432, Dec. 3, 2010). Accordingly, documentation of the collateral arrangements required under proposed § 23.601–603 would be included in the trading documentation required under § 23.504. Previously proposed § 23.601 requires that the SD and MSP notify each counterparty of the counterparty's right to elect for segregation of the collateral it supplies as initial margin. Previously proposed § 23.602 sets forth requirements for the treatment of segregated margin, including the use of an independent custodian and the requirement for a written agreement that includes the custodian as a party, and also allows for the SD or MSP to agree in writing with its counterparty that variation margin may also be held in a segregated account. Previously proposed § 23.603 relates to the investment and use of collateral.

[24] 76 FR at 6719. The valuation that would be established under § 23.504(b)(4) is relied upon in the Margin Requirements rule § 23.156(b)(1) as the basis for calculating variation margin. Similar valuation provisions also were included by the prudential regulators in their Margin and Capital Requirements proposal. *See* 76 FR 27589.

[25] Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants, 76 FR 6708, Feb. 8, 2011.

[26] 76 FR at 6709.

[27] While the compliance schedule proposed in this release would not apply to these provisions, the compliance dates for SDs and MSPs to come into compliance with these provisions will be taken up when the Commission adopts final rules.

[28] Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, Dec. 28, 2010. The Commission notes that rules related to portfolio reconciliation (§ 23.502) and portfolio compression (§ 23.503) were not cross-referenced in the Trading Documentation rule and would not be required to be included in the counterparties' primary trading relationship documentation. However, if the Commission finalizes those requirements at the same time as the Trading Documentation rule parties may, in their discretion, include documentation establishing compliance with such provisions in their primary documentation, if applicable.

[29] Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 75 FR 75432, Dec. 3, 2010.

[30] In promulgating final rules regarding the timing of confirmation by SDs, MSPs, and their counterparties, the Commission will ensure that compliance with the final confirmation requirements work together with the compliance schedule as proposed under this release.

Act.[31] The Commission and the SEC have proposed rules that would further define each of these terms.[32] As such, and in a manner consistent with the temporary relief provided in the Commission's Effective Date Order,[33] the Commission must adopt final rules regarding the further definitions in question prior to requiring compliance with the Trading Documentation rule.

Lastly, the Commission must adopt final rules relating to the registration, including procedures for the provisional registration, of SDs and MSPs.[34] The finalization of these rules would enable SDs and MSPs to register with the Commission. As explained in the preamble to the proposed registration rule for SDs and MSPs, the Commission would afford SDs and MSPs an overall phased implementation approach with regard to the specific requirements under Section 4s (the ''Section 4s Requirements'').[35] In other words, SDs and MSPs would be able to provisionally register with the Commission and come into compliance with the Section 4s Requirements within the compliance deadlines set forth in the respective final implementing rulemakings.[36] The specific compliance schedules proposed in this release comport with the approach discussed in the proposed registration rules.

Another proposed rule under Section 4s of the CEA indicated that certain requirements could be met through the use of swap trading relationship documentation (*e.g.,* in the ISDA master agreement). The disclosure and documentation requirements proposed under the ''Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties'' rulemaking[37] could be included in Trading Documentation at the discretion of the SD or MSP and its counterparty. However, there is no express requirement under either the proposed Business Conduct Standards with Counterparties rules or proposed § 23.504 that the proposed disclosure and documentation requirements be included in the Trading Documentation. For that reason, issues related to compliance dates for the Business Conduct Standards with Counterparties rules will be taken up when finalizing that proposal.

2. Compliance Schedule for Documentation Requirements—§ 23.575

As stated above, the Commission is proposing a compliance schedule, § 23.575, that is specific to the documentation requirements of proposed § 23.504. Under the proposed compliance schedule in § 23.575, an SD or MSP would be afforded ninety (90), one hundred eighty (180), or two hundred and seventy (270) days to bring its Trading Documentation with its various counterparties into compliance with the requirements of proposed § 23.504, depending on the identity of each such counterparty. The categorization by type of counterparty is discussed further below.

As a practical matter, in order for SDs and MSPs to comply with the requirements of proposed § 23.504, they will need to work with each of their counterparties, including non-registrants, to review, negotiate, execute, and deliver the documentation required by proposed § 23.504. Because every bilateral swap transaction has two counterparties, if a non-registrant is trading with a registered SD or MSP, the swap transactions entered into by those two parties would be subject to the new regulatory regime established by Section 4s of CEA.[38] For this reason, the Commission is focusing on phasing swap transaction compliance.

The Commission recognizes that a number of new regulations under Section 4s will apply to swap transactions where the counterparty to an SD or MSP is not registered with the Commission. In such cases, the Commission is affording more time for those transactions to be brought into compliance with the new regulations. Moreover, registered SDs or MSPs may require additional time to bring their transactions into compliance with respect to non-registrant counterparties that have hundreds or thousands of managed accounts, referred to as third-party subaccounts for the purposes of this proposal.

In many instances, as noted in the proposing release for § 23.504, counterparties already will have in place industry standard documentation in the form of the widely-used ISDA master agreement, definitions, schedules, confirmations, and credit support annex to document their trades. The Commission anticipates that some of this existing documentation will meet some of the requirements of proposed § 23.504. However, it may be necessary for parties to negotiate certain amendments or additional documentation to comply with the new rules. In these instances, and in instances where counterparties have not previously documented their trading relationship and/or individual transactions, the Commission proposes to afford relief in the form of additional time to comply.

C. Implementation Phasing of the Margin Documentation Requirements Under Section 4s(e) of the CEA

1. Background on the Margin for Uncleared Swaps Requirements

Section 731 of the Dodd-Frank Act added a new Section 4s(e) to the CEA that explicitly requires the Commission to adopt rules establishing margin requirements for all registered SDs and MSPs that are not banks.[39] Under

[31] Section 712(d)(1) provides: ''Notwithstanding any other provision of this title and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors [of the Federal Reserve System], shall further define the terms 'swap', 'security-based swap', 'swap dealer', 'security-based swap dealer', 'major swap participant', 'major security-based swap participant', and 'security-based swap agreement' in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).'' Section 721(c) provides: ''To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms 'swap', 'swap dealer', 'major swap participant', and 'eligible contract participant'.''

[32] Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant''; Proposed Rule, 75 FR 80174, Dec. 21, 2010 and Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818, May 23, 2011.

[33] *See* Effective Date for Swap Regulation, 76 FR 42508, Jul. 19, 2011.

[34] Registration of Swap Dealers and Major Swap Participants, 75 FR 71379, Nov. 23, 2010.

[35] The Section 4s Requirements include capital and margin, reporting and recordkeeping, daily trading records, business conduct standards, documentation standards, risk management and trading duties, designation of a chief compliance officer, and segregation with regard to uncleared swaps. 75 FR at 71380.

[36] In accordance with the preamble to the Registration proposal, the Commission anticipates finalizing other Section 4s Requirements, such as those rules proposed under Section 4s(e) (capital requirements), Section 4s(f) (reporting and recordkeeping), Section 4s(g) (daily trading records), Section 4s(h) (business conduct standards), Section 4s(j) (duties, including trading, risk management, disclosure of information, conflicts of interest, and antitrust considerations), and Section 4s(k) (designation of a chief compliance officer), and providing for specific compliance deadlines in the respective final implementing rulemakings based on the extensive public comment already received.

[37] 75 FR 80638, Dec. 22, 2010.

[38] Recognizing this reality, the Commission previously proposed rules under which SDs and MSPs would have policies and procedures to bring their transactions with all their counterparties into compliance with the requirements of Section 4s(i) of the CEA.

[39] Section 4s(e) applies a bifurcated approach that requires each SD and MSP for which there is a prudential regulator to meet margin requirements established by the applicable prudential regulator,

Continued

Section 4s(e)(2)(B), the Commission is required to adopt rules for non-bank SDs and MSPs imposing ''both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.''

On April 28, 2011, the Commission issued proposed regulations to implement the margin requirements for uncleared swaps for SDs and MSPs for which there is no prudential regulator (referred to as ''covered swap entities'' or ''CSEs'' under the proposal).[40] The proposed Margin Requirements recognized that specific margin requirements would vary by the type of counterparty entering into a swap with a CSE. For instance, the proposed rules would not impose any margin requirements on swaps between CSEs and non-financial end users.[41]

The provisions of the proposed Margin Requirements include definitions (§ 23.150), documentation regarding credit support arrangements (§ 23.151), the specific margin requirements between CSEs and their counterparties (§§ 23.152–23.154), provisions for the calculation of initial margin (§ 23.155), provisions for the calculation of variation margin (§ 23.156), requirements for the forms of margin (§ 23.157), and custodial arrangement requirements (§ 23.158). Specific margin requirements vary by the type of counterparty with which a CSE is trading—another SD or MSP [42] (§ 23.152), a financial entity (§ 23.153), or a non-financial entity (§ 23.154).

As explained above with regard to the Trading Documentation rules, the Commission observes that no CSE could be required to comply with final Margin Requirements rules until (1) the Commission adopts further definitions of ''swap,'' ''swap dealer,'' and ''major swap participant''; and (2) the Commission adopts registration rules for SDs and MSPs. As noted above, the proposed Margin Requirements cross-reference certain provisions in the Trading Documentation rule. As a result, the final Trading Documentation rule would have to be published in the **Federal Register** prior to requiring compliance with the final Margin Requirements.[43]

2. Compliance Schedule for Margin Requirements Documentation—§ 23.175

In this further notice of proposed rulemaking, the Commission is proposing a compliance schedule, § 23.175, that is specific to the Margin Requirements of proposed § 23.150 through § 23.158. Under the proposed Margin Requirements, an SD or MSP for which there is no prudential regulator, is defined as a ''covered swap entity.'' For consistency, this term also would be used in the proposed compliance schedule. In order to achieve compliance with the Margin Requirement, a CSE would be required to execute documentation regarding credit support arrangements and custodial arrangements with its counterparties. This documentation, required by proposed § 23.151 and § 23.158, would specify in advance material terms such as how margin would be calculated, what types of assets would be permitted to be posted, what margin thresholds, if any, would apply, and where margin would be held. As stated in the proposal, having comprehensive documentation in place at the time of transaction execution would allow each party to a swap to manage its risks more effectively throughout the life of the swap and to avoid disputes regarding issues such as valuation.[44]

Under the proposed compliance schedule, a covered swap entity would be afforded ninety (90), one hundred eighty (180), or two hundred and seventy (270) days (depending on the identity of its counterparty) to come into compliance with all of the Margin Requirements. The categorization by type of counterparty is discussed further below.

D. Three-Part Implementation Phasing

The Commission believes that it is in the public interest to afford SDs and MSPs over which the Commission has jurisdiction relief in the form of additional time to comply with proposed rules related to Trading Documentation (§ 23.504) and Margin Requirements (§ 23.150–23.158), depending on the type of counterparty with which the SD or MSP is trading.

These proposed compliance schedules, §§ 23.575 and 23.175, seek to achieve the best balance among several goals. First, the Commission believes that SDs or MSPs may require additional time to work with certain market participants to bring their swaps into compliance with the new requirements of proposed Trading Documentation (§ 23.504) and Margin Requirements (§ 23.150–23.158). This is particularly true for those market participants that have hundreds or thousands of managed accounts, referred to as third-party subaccounts for the purposes of this proposal.

As one commenter noted, ''[i]n the context of asset managers, the account set up process has to be multiplied over hundreds of subaccounts. Processing all of these subaccounts will take time even for the largest and most technologically advanced asset managers.'' [45] In light of this, the Commission is proposing to afford SDs and MSPs with additional time to come into compliance with the requirements of Trading Documentation (§ 23.504) and Margin Requirements (§ 23.150–23.158) for swaps involving entities that are defined as ''third-party subaccounts'' because of the additional burden associated with documenting such accounts.

Moreover, several commentators emphasized the need to have adequate time to educate their clients regarding the new regulatory requirements.[46] For instance, market participants that may not be registered with the Commission would be less familiar with the new regulatory requirements. In addition, market participants with third-party subaccounts would have to educate additional clients. Accordingly, swaps involving either type of participant should be given additional time to comply with the new requirements.

Another goal of the proposed compliance schedule is derived from the Commission's belief that it is important to have a cross-section of market participants involved at the outset of implementing the requirements under Trading Documentation (§ 23.504) and Margin

and each SD and MSP for which there is no prudential regulator to comply with Commission's regulations governing margin.

[40] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 75 FR 23732, Apr. 28, 2011.

[41] 76 FR at 23734.

[42] In some instances this SD or MSP counterparty may be subject to regulation by a prudential regulator. The margin rules proposed by the Commission and those proposed by the prudential authorities require any CSE to collect margin, but do require a CSE to post margin. Under this approach, a non-bank SD or MSP will look to the Commission's rules when calculating the margin that should be collected from its counterparty, and a bank SD or MSP will look to the prudential regulators' rules when calculating the margin that should be collected from its counterparty. As a result, in a trade between a bank SD and a non-bank SD, the initial margin amounts collected by each side could differ depending on the applicable rules.

[43] The Commission's proposed capital rules for SDs and MSPs are related to the proposed Margin Requirements rules, but the margin rules are not dependent on implementation of the capital rule in order to take effect.

[44] 76 FR 23734. As stated in the proposal, margining requirements would also apply to swaps where one side of the trade is not registered with the Commission. 76 FR 23732–36.

[45] Letter from Karrie McMillan, Investment Company Institute, dated June 10, 2011at 9–10.

[46] *See* Letter from Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry Association, dated May 4, 2011; Letter from Karrie McMillan, Investment Company Institute, dated June 10, 2011 at 10–11.

Requirements (§§ 23.150–23.158). Accordingly, the Commission proposes that the first phase of implementation include SDs, MSPs and ''active funds'' (a term that is defined and discussed further below) that are experienced, have the resources, and can come into compliance more readily than entities that trade swaps less frequently. The Commission believes that having a cross-section of market participants involved at the outset will facilitate the development of systems necessary for SDs and MSPs to achieve compliance with the new requirements.

The Commission proposes a compliance schedule that affords additional time for SDs and MSPs to come into compliance with the requirements of Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) based on the type of counterparty with which they are trading. Market participants that are financial entities, as defined in Section 2(h)(7)(C) of the CEA, are grouped into the following four categories:

- Category 1 Entities include swap dealers, security-based swap dealers, major swap participants, major security-based swap participants, or active funds.
- Category 2 Entities include commodity pools; private funds as defined in Section 202(a) of the Investment Advisors Act of 1940 other than active funds; employee benefit plans identified in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974; or persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956, *provided that* the entity is not a third-party subaccount.
- Category 3 Entities include Category 2 Entities whose positions are held as third-party subaccounts.
- Category 4 Entities includes any person not included in Categories 1, 2, or 3.

Phase 1—Category 1 Entities

Category 1 Entities include those dealers and major participants in the swap and security-based swap markets that will be required to register with the Commission or the Securities and Exchange Commission (SEC).[47] Under Title VII, these market participants will be required to register with either the CFTC or SEC as a result of their swaps or security-based swaps activities. Based on their level of market experience, and based on their status as registrants, the Commission believes they should be capable of complying with proposed Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) no later than 90 days from the date of adoption of final rules.

The Commission also is proposing to include those entities it defines as ''active funds'' in the first category of market participants. The proposed definition of ''active fund'' would mean any private fund as defined in section 202(a) of the Investment Advisors Act of 1940, that is not a third-party subaccount and that executes 20 or more swaps per month based on a monthly average over the 12 months preceding the publication of either § 23.504 or §§ 23.150–23.158, as applicable.[48] By including these entities in Category 1, the Commission seeks to achieve the goal of ensuring a cross-section of market participants are included at the outset of trading and margining documentation implementation.

The Commission is relying on the definition of private fund from Section 2(h)(7)(C) of the CEA, as well as Section 402 of the Dodd-Frank Act. However, the Commission is limiting the definition in two ways. First, the definition excludes third-party subaccounts, as discussed further below. Second, the definition is limited to those private funds that execute 20 or more swaps per month based on the average over the 12 months preceding either (1) the Commission's adoption of § 23.150 through § 23.158 in the case of § 23.175; or (2) the Commission's adoption of § 23.504 in the case of § 23.575. Based on a preliminary assessment, the Commission believes the proposed numerical threshold for active funds is appropriate because a private fund that conducts this volume of swaps would be likely to have: (1) Sufficient resources to enter into arrangements that comply with the Trading Documentation and Margin Requirements earlier than other types of market participants; and (2) sufficient market experience to contribute meaningfully to the ''buy-side'' perspective as industry standards are being developed.[49] In defining ''active fund'' accordingly, the Commission believes it has included those market participants that are likely to be among the most experienced participants with expertise and resources needed to come into transaction compliance quickly.

Phase 2—Category 2 Entities

Next, the Commission proposes to phase in compliance for any swap transaction between an SD or MSP and a Category 2 Entity. The Commission is proposing to afford swap transactions between these types of market participants 180 days from the dates of adoption of Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) to come into compliance. This additional time takes into consideration the fact that Category 2 Entities will not be required to be registered with the Commission and they may be less experienced and less frequent users of the swap markets than those in Category 1. Additionally, these financial entities may not have the same level of resources to review, analyze, negotiate, and enter into arrangements that comply with the new Trading Documentation and Margin Requirements as those in Category 1.

Phase 3—Category 3 and 4 Entities

Finally, the Commission proposes to afford an SD or MSP trading with a Category 3 or 4 Entity 270 days from adoption of final rules relating to Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) to enter into arrangements that comply with the new rules.

The Commission is proposing to afford SDs and MSPs with additional time to work with entities that are defined as ''third-party subaccounts'' to bring their documentation into compliance. Under the proposed definition, a third-party subaccount is a managed account that requires specific approval by the beneficial owner of the account to execute documentation necessary for executing, confirming, margining, or clearing swaps. By way of non-exclusive example, if investment management firm X manages the assets of pension fund Y, and does so in a separate account that requires the approval of pension fund Y to execute necessary documentation, then that account would be afforded 270 days to come into compliance. On the other hand, if pension fund Y manages its own assets, it would fall within

[47] If a security-based swap dealer or a major security-based swap participant is not yet required to register with the SEC at such time as the Commission issues final rules § 23.504 or §§ 23.150–23.158, then the security-based swap dealer or a major security-based swap participant would be treated as a Category 2 Entity.

[48] It should be noted that many commodity pools meet the definition of private fund under section 202(a) of the Investment Advisors Act of 1940. Such a commodity pool would only be a Category 1 Entity if it met the other criteria of an active fund.

[49] The Commission is unaware of any position-level or transaction-level data on private fund swap activity in a publicly available form. In order to determine private fund activity levels the Commission consulted with academics focusing their research in this area, with industry participants, and with groups that represent the industry.

Category 2 and be afforded 180 days to come into compliance. Likewise, if investment management firm X does not manage the assets of third parties, then it would fall within Category 2. The Commission is proposing to afford Category 3 an additional 90 days beyond the 180 days proposed for Category 2 because such entities may have documentation obligations for hundreds or even thousands of third-party subaccounts, and each such account must meet the requirements of Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158). For example, according to a statement made during the Joint SEC–CFTC Roundtable by Mr. William DeLeon of the firm Pacific Investment Management Company, LLC (PIMCO), PIMCO manages hundreds of third-party subaccounts, as defined above.[50]

The Commission is proposing to afford an SD or MSP trading with any other person (defined as a Category 4 Entity) 270 days to enter into arrangements that comply with the new rules.

The Commission stresses that nothing would prohibit any person from complying in advance of the proposed compliance schedule. Indeed, the Commission would encourage market participants that can come into compliance more quickly to do so.

E. Comment Requested

The Commission requests comment on all aspects of the proposed compliance schedules, §§ 23.175 and 23.575. The Commission may consider alternatives to the proposed compliance schedules and is requesting comment on the following questions:

- What, if any, other rules should have been taken into consideration when proposing an implementation schedule regarding margin or documentation requirements? If applicable, how should the implementation requirements of those other rules be taken into consideration?
- What factors, if any, would prevent an entity in any of the proposed categories from adhering to the compliance schedules proposed by the Commission? How much additional time would be needed to address these factors?
- Are there other considerations that the Commission should have taken into account when designing this tiered implementation schedule? Are the timeframes outlined in this implementation schedule adequate? If not, what alternative schedule should the Commission consider, and why?
- What other entities, if any, should be included in Category 1, 2, or 3, and why?
- What adjustments to the compliance schedule and/or other steps could the Commission take to ensure there is adequate representation from all market participants at the outset of implementing the requirements under Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158)?
- Is an entity's average monthly swap transaction activity a useful proxy for that entity's ability to comply with the Trading Documentation and Margin Requirements? Or whether an entity is required to be registered with the Commission (rather than whether an entity is already registered with the Commission)?
- Is the Commission's definition of ''active fund'' overly inclusive or under-inclusive? Should the numerical threshold for number of monthly swap transactions be higher or lower than 20? If so, why? Should the number of monthly swap transactions be linked to swap activity in a particular asset class?
- Should the Commission exclude from the definition of ''active fund'' any investment advisor of private funds acting solely as an advisor to private funds with assets under management in the United States of less than $150,000,000, as provided for in the reporting exemption for private funds under Section 408 of the Dodd-Frank Act?
- Would it be more appropriate for the Commission to measure a market participant's level of swap activity by measuring notional turnover and/or open exposure as suggested by some commenters?[51]
- Are there any anticompetitive implications to the proposed compliance schedules? If so, how could the proposed rules be implemented to achieve the purposes of the CEA in a less anticompetitive manner? If so, please quantify those costs, if possible, and provide underlying data sources, assumptions, and calculations.
- Are there additional costs or benefits associated with the current proposal that the Commission has not already taken into account? Please discuss any such costs in detail and quantify in dollar terms, if possible.
- Are there any assumptions, including quantitative assumptions, underlying the Commission's cost benefit analysis that the Commission should consider?
- Should the Commission consider an alternative implementation schedule? Would such an alternative schedule reduce the costs market participants will bear? Please describe any such alternative implementation schedule in detail, including how it will reduce costs and the benefits it will likely deliver. If possible, please quantify the cost and benefits associated with any alternative. If providing dollar values, please describe any data sources, assumptions, and calculations used to generate them.
- Should a compliance schedule such as those proposed herein apply to the disclosure and documentation requirements proposed in the Business Conduct Standards for Counterparties proposal? If so, should the compliance schedule be adjusted, and in what manner?

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[52] The rules proposed by the CFTC provide compliance schedules for certain new statutory requirements of the Dodd Frank Act and do not by themselves impose significant new regulatory requirements. Accordingly, the Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities. The CFTC invites public comment on this determination.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'')[53] imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA. This Further Notice of Proposed Rulemaking, if approved, would not require a new collection of information from any persons or entities.

C. Consideration of Costs and Benefits

Section 15(a) of the CEA[54] requires the Commission to consider the costs and benefits of its action before promulgating a regulation under the CEA. Section 15(a) of the CEA specifies

[50] Day-2 Roundtable Tr. at 62.

[51] Letter from Adam C. Cooper, Citadel, dated June 3, 2011, Appendix B.

[52] 5 U.S.C. 601 *et seq.*

[53] 44 U.S.C. 3507(d).

[54] 7 U.S.C. 19(a).

that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

The purpose of this proposed rule is to afford SDs and MSPs additional time to comply with the Trading Documentation and the Margin Requirements beyond that which is provided for in the Dodd-Frank Act. Section 754 of the Dodd-Frank Act provides that required rulemakings can be considered to be effective 60 days after publication of the final rule or regulation. Without the proposed rule, SDs and MSPs could be required to comply with Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) rules without any implementation phasing of the sort provided for by the proposed compliance schedules.

The Commission recognizes that requiring immediate compliance with the new requirements could indirectly impose costs on market participants that may not be registered with the Commission and those market participants that have hundreds or thousands of third-party subaccounts to bring into compliance. Accordingly, and in an effort to protect the public interest by facilitating an orderly transition to a new regulatory environment, the Commission's proposed compliance schedules would provide a substantial benefit in that they would afford SDs and MSPs adequate time to modify or create the requisite documentation in collaboration with their counterparties.

1. Protection of Market Participants and the Public

The Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) rules for which the Commission has proposed compliance schedules would encourage transparency in the swap market by requiring that SDs, MSPs, and their counterparties clarify, in writing, many aspects of their trading relationship prior to entering into a swap, and also that they clarify many specific details related to margining their swaps. The proposed compliance schedules would further the objectives of Sections 4s(e) and 4s(i) of the CEA by establishing an orderly process for their implementation. The proposed compliance schedules have several benefits that contribute to protection of the public as well as market participants.

It is in the public interest that the largest and most active participants in the swap markets come into compliance with Sections 4s(e) and 4s(i) of the CEA as soon as possible, in order to facilitate an orderly transition to the new regulatory environment for swaps. The proposed compliance schedules would prioritize compliance for Category 1 Entities because these entities are likely responsible for a large portion of the swap transactions occurring in this market. But the schedule would do so in a way that still safeguards the interests of the Category 1 Entities by providing the additional time that these entities need in order to document new trading relationship and margining arrangements required by Sections 4s(e) and 4s(i) of the CEA.

The additional time provided by the proposed compliance schedules would create several benefits for the SDs, MSPs, and their counterparties. First, if market participants were concerned that they might not be able to meet statutory compliance timelines, it is likely that they would incur additional costs associated with the potential lack of regulatory compliance. Providing additional time for compliance through the proposed compliance schedule would reduce the costs that market participants may incur mitigating risks during the transition period, and would re-direct those resources to achieving compliance with the new rules.

Second, if Category 2, 3, or 4 Entities want to come into compliance ahead of the timeframes proposed for their SD or MSP counterparties through the compliance schedules, they may work with their SD and MSP counterparties to do so. Category 2, 3, or 4 Entities may wish to achieve compliance earlier in order to achieve the benefits associated with greater clarity in their trading relationships and margin arrangements for non-cleared swaps. They also may wish to take advantage of newly developed template agreements as they develop. Such early compliance by market participants would provide additional protection for the public by decreasing the risks associated with failing to document trading relationships and swap transactions properly, as well as decreasing the risks associated with failing to collateralize the credit exposure posed by uncleared swaps. Additionally, early compliance would have the benefit of increasing clarity about how margin will be handled for non-cleared swaps.

Category 3 Entities have the additional challenge of transitioning hundreds, and in some cases, thousands of subaccounts into compliance with the new documentation requirements for trading relationships and margining non-cleared swaps. The proposed compliance schedules would afford Category 3 Entities additional time to educate their customers about the new requirements, and then negotiate and formalize new trading and margining agreements between their customers and SDs or MSPs. Each of these tasks requires time. By giving Category 3 Entities and their counterparties 270 days to come into compliance, the Commission is attempting to provide adequate time for these entities to come into compliance without the need for significant additional legal assistance. The Commission also is attempting to avoid the risk of inadequate documentation and inappropriate margining arrangements that may result from a more rushed process. Both of these results would tend to reduce costs and risk for both SDs and MSPs and their Category 3 Entities counterparties.

As far as costs are concerned, by establishing a 3-month, 6-month, and 9-month compliance schedule for SDs and MSPs to achieve compliance with their counterparties that are Category 1, Category 2, and Category 3 and 4 Entities, respectively, the proposed compliance schedule would delay certain benefits that would result from more timely and accurate documentation by SDs and MSPs, as well as timely compliance with Margin Requirements for non-cleared swaps. Those costs primarily include a delay in decreasing the risks associated with the failure to document trading relationships and swap transactions properly, as well as a delay in terms of decreasing the risks associated with not collateralizing the credit exposure posed by uncleared swaps.

The proposed compliance schedules seek to balance the cost to SDs, MSPs, and the Category 1 Entities that would be associated with bearing a larger proportion of the ''start-up'' costs associated with most promptly implementing the Trading Documentation and Margin Requirements. SDs, MSPs, and Category 1 Entities are the entities likely to expend the most resources establishing industry standard agreements that can then be used by other market participants. It is appropriate for the

entities that are likely to be among the most active participants in these markets to shoulder a larger percentage of the relatively fixed start-up costs.

2. Efficiency, Competitiveness, and Financial Integrity of the Markets

The SDs, MSPs, and Category 1 Entities that constitute the first phase under the proposed compliance schedules will be likely to work together to establish methods for compliance that other market participants may later consider. The experience with swaps that the first group of market participants brings to this process should help to ensure the integrity and effectiveness of their solutions. These solutions will likely be helpful to other market participants that comply later. This approach is likely to result in benefits for a broad group of market participants.

Moreover, it is critical that a cross-section of market participants is involved in developing the solutions that become industry conventions in order to ensure that those approaches promote the efficiency, competitiveness, and integrity of participants on both the buy-side and sell-side. Category 1 includes market participants from both sides, which helps ensure that the interests of both will be represented well as the industry identifies and solves the problems that are necessary for compliance.

With respect to the activities of Category 1 participants, providing them 90 days to come into compliance after the Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) are published in the **Federal Register** would create some time and opportunity for industry coordination as multiple participants, representing both the sell-side and buy-side of the market, identify shared questions and work to develop sound answers. This is likely to facilitate better compliance systems and processes, which reduces the start-up costs of implementing new regulations for these and other entities, which is expected to lower costs to the public by promoting standardization.

Lastly, in the absence of the proposed compliance schedules, some entities have expressed concern that they would be unable to comply with the new requirements and would choose to leave the swap market altogether or avoid the market for some period of time. If this occurred, it could reduce liquidity and might increase spreads in the market. By providing additional time for compliance, this rule reduces the chance that these adverse effects will occur in the swap market and facilitates an orderly transition to the new regulatory environment.

As for costs related to the efficiency, competitiveness, and financial integrity of the markets, the proposed compliance schedules would allow for delayed compliance dates for new Trading Documentation and Margin Requirements. The schedules would delay the benefits of the new requirements that would come from more expeditious implementation.

3. Price Discovery

As noted above, the Trading Documentation rule contains a requirement that an SD or MSP and its counterparty agree on how they will value each swap transaction into which they enter from the point of execution until the termination, maturity, or expiration of the swap. Prompt implementation of this requirement would facilitate price discovery between the counterparties to a swap. Delay in implementing this provision may inhibit price discovery to the extent that counterparties fail to value their swaps on a timely and accurate basis. In this way, the proposed rule would delay the benefits of increased price transparency that could flow from a more expeditious implementation of the Trading Documentation rule. Additionally, a disorderly implementation may inhibit price discovery to the extent that counterparties fail to value their swaps on a timely and accurate basis; whereas, an orderly implementation process would promote communication between counterparties, which is essential to price discovery.

4. Sound Risk Management Practices

To the extent that the proposed compliance schedule would delay implementation of the Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) rules, the swap market could suffer costs in terms of poor risk management resulting from a failure to document trading relationships and swap transactions properly, as well as from failure to collateralize the outstanding credit exposure posed by uncleared swaps through appropriate margining.

However, there are risk management benefits to be gained from the proposed compliance schedule. For instance, if SDs and MSPs were expected to comply with Trading Documentation (§ 23.504) and Margin Requirements (§§ 23.150–23.158) on timelines that they could not meet, it is possible that some firms may avoid the swap market for a period of time, which could expose them to risks they could have otherwise used swaps to mitigate. Therefore, by providing a timetable for orderly implementation, this rule could encourage continued participation in the swap markets and the continued use of swaps for risk mitigation purposes.

5. Other Public Interest Considerations

There are public interest benefits to phasing in compliance using the implementation structure proposed in this release. The proposed implementation structure generally allows market participants to comply with the requirements of Dodd-Frank as quickly and efficiently as possible and thereby provides a sound basis for achieving the overarching Dodd-Frank goals of risk reduction and increased market transparency.

In sum, the Commission has considered the costs and benefits as required by Section 15(a) and is proposing the compliance schedules discussed herein. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 23

Antitrust, Commodity futures, Conduct standards, Conflicts of interest, Major swap participants, Reporting and recordkeeping, Swap dealers, Swaps.

For the reasons stated in the preamble, 17 CFR part 23 is proposed to be amended as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

2. Add § 23.175 to subpart E to read as follows:

§ 23.175 Compliance schedule.

(a) *Definitions.* For the purposes of this rule:

Active Fund means any private fund as defined in section 202(a) of the Investment Advisors Act of 1940, that is not a third-party subaccount and that executes 20 or more swaps per month based on a monthly average over the 12 months preceding the publication of § 23.150 through § 23.158 in the **Federal Register.**

Category 1 Entity means (1) A swap dealer, (2) a security-based swap dealer; (3) a major swap participant; (4) a major security-based swap participant; or (5) an active fund.

Category 2 Entity means (1) A commodity pool; (2) a private fund as defined in section 202(a) of the Investment Advisors Act of 1940 other than an active fund; (3) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974; or (4) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, *provided that,* in each case, the entity is not a third-party subaccount.

Category 3 Entity means a Category 2 Entity whose positions are held as a third-party subaccount.

Category 4 Entity means any person not included in Categories 1, 2, or 3.

Covered swap entity means a swap dealer or major swap participant for which there is no prudential regulator.

Third-party Subaccount means a managed account that requires specific approval by the beneficial owner of the account to execute documentation necessary for executing, confirming, margining, or clearing swaps.

(b) *Compliance Schedule.* The following schedule for compliance with the requirements of § 23.150 through § 23.158 shall apply:

(1) For swap transactions with a Category 1 Entity, a covered swap entity shall comply with the requirements of § 23.150 through § 23.158 no later than ninety (90) days from the date of publication of such requirements in the **Federal Register**.

(2) For swap transactions with a Category 2 Entity, a covered swap entity shall comply with the requirements of § 23.150 through § 23.158 no later than one hundred and eighty (180) days from the date of publication of such requirements in the **Federal Register**.

(3) For swap transactions with a Category 3 Entity or a Category 4 Entity, a covered swap entity shall comply with the requirements of § 23.150 through § 23.158 no later than two hundred and seventy (270) days from the date of publication of such requirements in the **Federal Register**.

(c) Nothing in this rule shall prohibit any person from complying voluntarily with the requirements of § 23.150 through § 23.158 sooner than the compliance schedule provided in paragraph (b).

3. Add new § 23.575 to part 23, subpart I, to read as follows:

§ 23.575 Compliance schedule.

(a) *Definitions.* For the purposes of this rule:

Active Fund means any private fund as defined in section 202(a) of the Investment Advisors Act of 1940, that is not a third-party subaccount and that executes 20 or more swaps per month based on a monthly average over the 12 months preceding the publication of § 23.504 in the **Federal Register.**

Category 1 Entity means (1) A swap dealer, (2) a security-based swap dealer; (3) a major swap participant; (4) a major security-based swap participant; or (5) an active fund.

Category 2 Entity means (1) A commodity pool; (2) a private fund as defined in section 202(a) of the Investment Advisors Act of 1940 other than an active fund; (3) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974; or (4) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, *provided that,* in each case, the entity is not a third-party subaccount.

Category 3 Entity means a Category 2 Entity whose positions are held as a third-party subaccount.

Category 4 Entity means any person not included in Categories 1, 2, or 3.

Third-party Subaccount means a managed account that requires specific approval by the beneficial owner of the account to execute documentation necessary for executing, confirming, margining, or clearing swaps.

(b) *Compliance schedule.* The following schedule for compliance with the requirements of § 23.504 shall apply:

(1) For swap transactions with a Category 1 Entity, a swap dealer or major swap participant shall comply with the requirements of § 23.504 no later than ninety (90) days from the date of publication of such requirements in the **Federal Register**.

(2) For swap transactions with a Category 2 Entity, a swap dealer or major swap participant shall comply with the requirements of § 23.504 no later than one hundred and eighty (180) days from the date of publication of such requirements in the **Federal Register**.

(3) For swap transactions with a Category 3 Entity or a Category 4 Entity, a swap dealer or major swap participant shall comply with the requirements of § 23.504 no later than two hundred and seventy (270) days from the date of publication of such requirements in the **Federal Register**.

(c) Nothing in this rule shall prohibit any person from complying voluntarily with the requirements of § 23.504 sooner than the compliance schedule provided in paragraph (b).

Issued in Washington, DC, on September 8, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices To Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements Under Section 4s of the CEA—Commissioners Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations

Appendix 1—Commissioners Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, and Chilton voted in the affirmative; Commissioner O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support this proposal to establish schedules to phase in compliance with previously proposed requirements, including the swap trading relationship documentation requirement and the margin requirements for uncleared swaps. The proposal would provide greater clarity to swap dealers and major swap participants regarding the timeframe for bringing their swap transactions into compliance with new documentation and margining rules. The proposal also would make the market more open and transparent, while giving market participants an adequate amount of time to comply. The proposal would help facilitate an orderly transition to a new regulatory environment for swaps.

Appendix 3—Statement of Commissioner Scott O'Malia

I respectfully dissent from the Commission's decision today to approve for **Federal Register** publication two rule proposals related to implementation entitled ''Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA'' and ''Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA.'' For quite some time, I have been asking that the Commission publish for notice and comment a comprehensive implementation schedule that addresses the entire mosaic of rule proposals under the Dodd-Frank Act. I believe the Commission should have proposed a comprehensive schedule that detailed, at a minimum:

- For each registered entity (*e.g.,* swap dealer and major swap participants), compliance dates for each of its entity-specific obligations (*e.g.,* all obligations under Section 4s of the Commodity Exchange Act) under Dodd-Frank; and
- For each market-wide obligation (*e.g.,* the clearing and trading mandates), the

entities affected (whether registered or unregistered) along with appropriate compliance dates.

Such a schedule would have complemented and informed existing proposals and provided structure to future determinations. Additionally, a proposal regarding such a schedule should have adequately analyzed the costs and benefits of alternatives, including appropriate quantification. Unfortunately, the two rule proposals that the Commission approved today fail to either propose a comprehensive schedule or provide an adequate cost benefit analysis.

The Commission's proposals also fail to request comment on a number of issues that I believe are important considerations in developing an implementation plan. As a result, I am encouraging commenters to submit responses to the questions below as part of their comments on the two rule proposals.

Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA

• Should the Commission provide guidance on how it will make and communicate a mandatory clearing determination prior to considering the first such determination? If so, what information should be included in guidance?

• As section II(E) of the proposal states: ''When issuing a mandatory clearing determination, the Commission would set an effective date by which all market participants would have to comply. In other words, the proposed compliance schedules would be used only when the Commission believes that phasing is necessary based on the considerations outlined in this release. The Commission will provide the public with notice of its intent to rely upon the compliance schedule pursuant to the process outlined in § 39.5(b)(5).'' To afford more certainty to market participants, should the Commission instead create a presumption that it will rely on the compliance schedule for each mandatory clearing determination that it issues, unless it finds that the compliance schedule is not necessary to achieve the benefits set forth in the proposal (*e.g.,* facilitating the transition to the new regulatory regime established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions)?

• What, if any, other issues not addressed in current proposed or final rulemakings should the Commission have taken into consideration when proposing the compliance schedule? For example, should the Commission have considered the extent to which its clearing and trade execution requirements apply to entities and transactions located outside the United States? Also, should the Commission have considered the extent to which such requirements apply to transactions between affiliates (whether domestic or cross-border)? If applicable, how should the Commission adjust the proposed compliance schedule to account for such issues?

• What, if any, adjustments should the Commission make to the proposed compliance schedule for trade execution requirements if the Commission makes a determination that a group, category, type, or class of swaps, rather than a specific swap, is subject to mandatory clearing? Would such adjustments vary depending on the manner in which the Commission defines group, category, type, or class?

Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements Under Section 4s of the CEA

• What, if any, other issues not addressed in current proposed or final rulemakings should the Commission have taken into consideration when proposing the compliance schedule? For example, should the Commission have considered the extent to which its documentation and margin requirements apply to entities and transactions located outside the United States? Also, should the Commission have considered the extent to which such requirements apply to transactions between affiliates (whether domestic or cross-border)? If applicable, how should the Commission adjust the proposed compliance schedule to account for such issues?

Finally, I want to be clear that I support completing the final Dodd-Frank rulemakings in a reasonable time frame. I believe that the timely implementation of such rulemakings is important. Knowing when and how the markets are required to do what is vital to the success of implementing the new market structure required under the Dodd-Frank Act. When billions of dollars are at stake, you simply do not rely on guesses and estimates based on vague conditions.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37, 38, and 39

RIN 3038–AD60

Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations that would establish a schedule to phase in compliance with certain new statutory provisions enacted under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These provisions include the clearing requirement under new section 2(h)(1)(A) of the Commodity Exchange Act (CEA or Act), and the trade execution requirement under new section 2(h)(8)(A) of the CEA. The proposed schedules would provide relief in the form of additional time for compliance with these requirements. This relief is intended to facilitate the transition to the new regulatory regime established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions. The Commission requests comment on the proposed compliance schedules for these clearing and trade execution requirements.

DATES: Submit comments on or before November 4, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD60 and Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, by any of the following methods:

• *Agency Web site,* via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

• *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

• *Hand Delivery/Courier:* Same as mail above.

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

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other

applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Dhaval Patel, Counsel, Office of the General Counsel, 202–418–5125, *dpatel@cftc.gov,* or Camden Nunery, Office of the Chief Economist, *cnunnery@cftc.gov,* 202–418–5723, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act amends the CEA [2] to establish a comprehensive new regulatory framework for swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the rulemaking and enforcement authorities of the Commission with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

To implement the Dodd-Frank Act, the Commission has to-date issued 55 advance notices of proposed rulemaking or notices of proposed rulemaking, two interim final rules, 12 final rules, and one proposed interpretive order. By the beginning of May 2011, the Commission had published in the **Federal Register** a significant number of notices of proposed rulemaking, which represented a substantially complete mosaic of the Commission's proposed regulatory framework under Title VII of the Dodd-Frank Act. In recognition of that fact and with the goal of giving market participants additional time to comment on the proposed new regulatory framework for swaps, either in part or as a whole, the Commission reopened or extended the comment period of many of its proposed rulemakings through June 3, 2011.[3] In total, the Commission has received over 20,000 comments in response to its Dodd-Frank Act rulemaking proposals.

To give the public an opportunity to comment further on implementation phasing, on May 2–3, 2011, the Commission, along with the Securities and Exchange Commission (SEC), held a joint, two-day roundtable on issues related to implementation.[4] In connection with this roundtable, Commission staff proposed thirteen concepts to be considered regarding implementation phasing, and staff asked a series of questions based on the concepts outlined.[5] The Commission received numerous comments in response to both its roundtable and the staff concepts and questions.[6]

These comments were submitted by a number of existing and potential market infrastructures, including clearinghouses, trading platforms, and swap data repositories. Comments also were submitted by entities that may potentially be swap dealers (SDs) or major swap participants (MSPs), as well as those financial entities that may not be required to register with the Commission, but whose swap transactions may be required to comply with the clearing requirement under section 2(h)(1)(A) of the CEA, and a trade execution requirement under section 2(h)(8)(A) of the CEA. The Commission also received many comments from non-financial entities.

One of the key themes to emerge from the comments received by the Commission is that some market participants may require more time to bring their swap transactions into compliance with certain new regulatory requirements.[7] For example, one commenter requested a ''meaningful'' period after finalization of the suite of rulemakings that is applicable to it before actual compliance will be required.[8] Similarly, several trade associations recommended the Commission allow ''sufficient'' time for infrastructure and business practices to develop before requiring compliance with the new requirements.[9] A group of international banks commented that the Commission should defer compliance until December 31, 2012, at which point the regulatory timetable as per the September 2009 G20 Pittsburgh statement will have reached a conclusion.[10] Another commenter noted that some entities may be able to comply relatively quickly with certain documentation requirements that are largely consistent with current business practices while other requirements may need a longer implementation period.[11] Although commenters varied in their recommendations regarding the time it would take to bring their swaps into compliance with the new regulatory requirements,[12] many commenters agreed on phasing in compliance with these requirements by type of market participant based on a variety of factors, including a market participant's experience, resources, and the size and complexity of its transactions.[13] The Commission has taken these comments into consideration in developing the proposed compliance schedules.

The swap transaction compliance requirements that are the subject of this proposed rulemaking include compliance with the clearing requirement and the corresponding trade execution requirement under sections 2(h)(1)(A) and 2(h)(8)(A) of the CEA, respectively.[14] The Commission's

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[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] *See* Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 25274, May 4, 2011.

[4] The transcripts from the roundtable are available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050311.pdf* (''Day 1 Roundtable Tr.'') and *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050211.pdf* (''Day 2 Roundtable Tr.'').

[5] *See* ''CFTC Staff Concepts and Questions Regarding Phased Implementation of Effective Dates for Final Dodd-Frank Rules,'' available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/staffconcepts050211.pdf.*

[6] Such comments are available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1000.*

[7] *E.g.,* Letter from Karrie McMillan, Investment Company Institute, dated Jun. 10, 2011 at 8–11; Letter from Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association, dated May 4, 2011 at 7–9; Letter from Jeff Gooch, MarkitSERV, dated Jun. 10, 2011 at 1–2 and 6; Letter from Electric Trade Association, dated May 4, 2011 at 5; Letter from John R. Gidman, Association of Institutional Investors, dated Jun. 10, 2011 at 3.

[8] Letter from the Coalition of Physical Energy Companies, dated Mar. 14, 2011 at 4.

[9] Letter from the Futures Industry Association, the Financial Services Forum, the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association, dated May 4, 2011 at 5.

[10] Letter from the Bank of Tokyo-Mitsubishi UFJ, Ltd., *et al.,* dated May 6, 2011 at 6.

[11] Letter from the Financial Services Roundtable, dated May 12, 2011 at 4.

[12] For example, Javelin stated that it could be open for business and generally be in compliance with the clearing and trade execution requirements within 6 months. Day 1 Roundtable Tr. at 104–105. Citadel suggested moving towards a voluntary clearing launch between day 180 and day 240, and eventually moving towards a mandatory clearing date. Day 1 Roundtable Tr. at 73–74. Moreover, the Swap Financial Group offered a different perspective stating that it generally thought implementation of Dodd-Drank could be accomplished in a year or two. Day 2 Roundtable Tr. at 269.

[13] These comments are more fully discussed later in the preamble.

[14] The Commission also is proposing Swap Transaction Compliance and Implementation Schedule: Trade Documentation and Margining Requirements under section 4s of the CEA.

proposed compliance schedules are designed to afford affected market participants a reasonable amount of time to bring their transactions into compliance with such requirements. The proposed schedules also would provide relief in the form of additional time for compliance with these transaction compliance requirements and are further explained below.[15] This relief is intended to facilitate the transition to the new regulatory regime established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions.

II. Proposed Regulation

A. Authority to Implement Proposed Regulations

In this Notice of Proposed Rulemaking, the Commission relies on its general authority to establish compliance dates with the rules and regulations enacted pursuant to the Dodd-Frank Act. Section 712(f) also authorizes the Commission to promulgate rules to prepare for the effective dates of the provisions of the Dodd-Frank Act.[16] In addition, the Commission relies on section 8(a)(5) of the CEA, which authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. In accordance with this authority, the proposed regulations would amend parts 37, 38, and 39 of the Commission's regulations to phase in compliance dates for the clearing and trade execution requirements under section 2(h) of the CEA.

B. Implementation Phasing of the Clearing Requirement under Section 2(h)(1)

1. Background on Mandatory Clearing Determinations

Section 723(a)(3) of the Dodd-Frank Act amended the CEA to provide, under new section 2(h)(1)(A), that ''it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.'' [17] Section 2(h)(2) charges the Commission with the responsibility for determining whether a swap is required to be cleared, through one of two avenues: (1) Pursuant to a Commission-initiated review; or (2) pursuant to a submission from a derivatives clearing organization (DCO) of each swap, or any group, category, type, or class of swaps that the DCO ''plans to accept for clearing.'' [18]

On July 26, 2011, the Commission published in the **Federal Register** a final rule regarding the process for review of swaps for mandatory clearing.[19] Under § 39.5(b)(6), the Commission will review a DCO's submission and determine whether the swap, or group, category, type, or class of swaps, described in the submission is required to be cleared. This determination will be made not later than 90 days after a complete submission has been received from a DCO, unless the submitting DCO agrees to an extension. Under § 39.5(c), Commission-initiated reviews of swaps that have not been accepted for clearing by a DCO will take place on an ongoing basis. However, as explained in the preamble to the final rule, the ''Commission anticipates that the initial mandatory clearing determinations would only involve swaps that are already being cleared or that a DCO wants to clear.'' [20]

Because the Commission initially will consider mandatory clearing determinations based on those swaps that DCOs are currently clearing or that a DCO would like to clear, the initial sequence of mandatory clearing determinations will be based on the market's view of which swaps can be cleared and which asset classes are ready for clearing, as reflected by the fact that a DCO is either currently clearing a group, category, type, or class of swaps or is intending to do so. For example, multiple registered DCOs currently clear interest rate, credit, and commodity swaps. For these swaps, the Commission will begin the review process for issuing mandatory clearing determinations in the near term.

The Commission observes that before market participants could be required to comply with a mandatory clearing determination, the Commission must adopt its final rules related to the end-user exception to mandatory clearing established by section 2(h)(7) of the CEA. In December 2010, the Commission proposed rules governing this elective exception to mandatory clearing.[21] The proposed rule generally provides that a swap otherwise subject to mandatory clearing is subject to an elective exception from clearing if one party to the swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the Commission how it generally meets its financial obligations associated with entering into non-cleared swaps (the ''end-user clearing exception'').[22] Because this proposed rule would establish the process by which a non-financial entity would elect not to clear a swap subject to a clearing requirement, this rule would need to be finalized prior to requiring compliance with a mandatory clearing determination.

In addition, the Commission recognizes that the swap transaction compliance schedules that are the subject of this proposal reference terms such as ''swap,'' ''swap dealer,'' and ''major swap participant'' that are the subject of rulemaking under sections 712(d)(1) and 721(c) of the Dodd-Frank Act.[23] The Commission and the SEC have proposed rules that would further define each of these terms.[24] As such,

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[15] The proposed compliance schedules do not address the effective dates of the clearing and trade execution requirements in the Dodd-Frank Act, including the application of the Commission's Effective Date Order to such requirements. *See* Effective Date for Swap Regulation, 76 FR 42508, Jul. 19, 2011.

[16] Section 712(f) of the Dodd-Frank Act states: ''Beginning on the date of enactment of this Act and notwithstanding the effective date of any provision of this Act, the [Commission] * * * may, in order to prepare for the effective dates of the provisions of this Act—(1) promulgate rules, regulations, or orders permitted or required by this Act * * *.''

[17] Section 2(h)(7) of the CEA provides an exception to the clearing requirement (''the end-user exception'') when one of the counterparties to a swap (i) Is not a financial entity, (ii) is using the swap to hedge or mitigate commercial risk, and (iii) notifies the Commission how it generally meets its financial obligations associated with entering into a non-cleared swap.

[18] Under section 2(h)(2)(B)(ii), the Commission must consider swaps listed for clearing by a DCO as of the date of enactment of the Dodd-Frank Act.

[19] 76 FR 44464, Jul. 26, 2011.

[20] 76 FR at 44469.

[21] End-User Exception to Mandatory Clearing of Swaps, 75 FR 80747, Dec. 23, 2010.

[22] 75 FR at 80748.

[23] Section 712(d)(1) provides: ''Notwithstanding any other provision of this title and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors [of the Federal Reserve System], shall further define the terms 'swap', 'security-based swap', 'swap dealer', 'security-based swap dealer', 'major swap participant', 'major security-based swap participant', and 'security-based swap agreement' in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).'' Section 721(c) provides: ''To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms 'swap', 'swap dealer', 'major swap participant', and 'eligible contract participant'.''

[24] Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant''; Proposed Rule, 75 FR 80174, Dec. 21, 2010 and Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement'';

and in a manner consistent with the temporary relief provided in the Commission's Effective Date Order,[25] the Commission must adopt its final rules regarding the further definitions in question prior to requiring compliance with a mandatory clearing determination.[26]

Lastly, the Commission notes that it has yet to adopt final rules relating to the protection of cleared swaps customer contracts and collateral. These rules are essential for establishing the customer protection regime associated with client clearing for swaps through Commission-registered futures commission merchants (FCMs) at DCOs.[27] The Commission believes that finalizing the rules regarding the segregation of customer collateral prior to requiring compliance with a mandatory clearing determination is necessary to effectuate the purposes of new section 4d(f) of the CEA.

2. Compliance Schedule for Clearing Requirement—§ 39.5(e)

Proposed § 39.5(e) would provide the Commission with the authority to phase in compliance with a clearing requirement upon issuance of a mandatory clearing determination. The proposed compliance schedule is based on the type of market participants entering into the swaps subject to the clearing requirement. The triggering event for the application of this compliance schedule would be the Commission's issuance of a determination that the swap, or group, category, type, or class of swaps, is required to be cleared.[28]

In proposing phased implementation schedules for the clearing requirement, the Commission seeks to balance several goals. First, the Commission believes that certain market participants may require additional time to bring their swaps into compliance with the new regulatory requirement for mandatory clearing of a swap or class of swaps. This is particularly true for market participants that may not be registered with the Commission and those market participants that may have hundreds or thousands of managed accounts, referred to as ''third-party subaccounts'' for the purposes of this proposal. Under this proposal, these parties would be afforded additional time to document new client clearing arrangements, connect to market infrastructure such as DCOs, and prepare themselves and their customers for the new regulatory requirements. As one commenter noted, ''[i]n the context of asset managers, the account set up process has to be multiplied over hundreds of subaccounts. Processing all of these subaccounts will take time even for the largest and most technologically advanced asset managers.'' [29]

Moreover, several commenters emphasized the need to have adequate time to educate their clients regarding the new regulatory requirements.[30] For instance, market participants not registered with the Commission may not be familiar with the new regulatory requirements. In addition, market participants with third-party subaccounts would have to educate additional clients. Accordingly, both types of participants should be given additional time to prepare for compliance with the new requirements.

Another goal of the proposed compliance schedule is to have adequate representation of market participants involved at the outset of implementing a new mandatory clearing regime for swaps. The Commission believes that having a cross-section of market participants involved at the outset of formulating and designing the rules and infrastructure under which mandatory clearing is implemented will best meet the needs of all market participants.

Several commenters have recommended that the Commission take such an approach. For example, one commenter emphasized the importance of the initiation of so-called ''buy-side'' clearing access for credit default swaps in 2009 and recommended that ''[a]t the time that a class of products is ready for clearing, all market participants (including buy-side participants) should be permitted (but not required) to clear those products * * *.'' [31] In another example, one commenter recommended that in phasing mandatory clearing the Commission should aim for open access to establish an ''all to all market'' with both sides of the trade involved with the initial implementation.[32] In further response to these comments, the Commission notes that market participants can begin (and continue) voluntarily clearing swaps through eligible DCOs at any time.

C. Implementation Phasing of the Trade Execution Requirement Under Section 2(h)(8)

1. Background on Trade Execution Requirement

Section 723 of the Dodd Frank Act amended the CEA to provide, under new section 2(h)(8)(A), that with respect to a swap that is subject to the clearing requirement of section 2(h)(1)(A), ''counterparties shall (i) execute the transaction on a board of trade designated as a contract market under section 5 [a DCM]; or (ii) execute the transaction on a swap execution facility [SEF] registered under section 5h or a swap execution facility exempt from registration under section 5h(f) of this Act.'' Under section 2(h)(8)(B), the only exceptions to the trade execution requirement are if no DCM or SEF ''makes the swap available to trade'' or the swap is subject to the clearing exception under section 2(h)(7) (i.e., the end-user exception).[33]

Based on the natural phasing provided for in the statute, a trade execution requirement is triggered for a swap when (1) The Commission has issued a determination that the swap is required to be cleared and (2) any DCM or SEF has made the swap available to trade.[34]

The Commission observes that before market participants could be required to comply with a trade execution requirement the Commission must adopt final rules related to SEFs and DCMs. The Commission has proposed rules related to the new core principles for DCMs and the changes to the 18 original DCM core principles.[35] While

Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818, May 23, 2011.

[25] *See* Effective Date for Swap Regulation, 76 FR 42508, Jul. 19, 2011.

[26] Notably, under section 712(f) of the Dodd-Frank Act, these definitions would not have to be finalized for the Commission to review swap submissions from DCOs.

[27] Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 76 FR 33818, Jun. 9, 2011.

[28] *See* discussion below at p. 21 and above at p. 7. It would be possible for the Commission to issue a mandatory clearing determination but postpone the overall compliance date for all market participants for some period of time. Additionally, market participants may begin clearing their swap transactions as soon as a DCO begins accepting such swaps for clearing, regardless of whether the Commission determines that such swaps are required to be cleared.

[29] Letter from Karrie McMillan, Investment Company Institute, dated Jun. 10, 2011 at 9–10.

[30] *See* Letter from Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry Association, dated May 4, 2011 at 9; Letter from Karrie McMillan, Investment Company Institute, dated Jun. 10, 2011 at 10–11.

[31] Letter from Richard H. Baker, Managed Funds Association, dated Mar. 24, 2011 at Appendix 1, page 1 and Appendix 2, page 2.

[32] Letter from Chris Koppenheffer, Swaps & Derivatives Market Association, dated Jun. 1, 2011 at 2.

[33] Section 2(h)(1)(B).

[34] This rulemaking does not address the manner in which it may be determined or established that a DCM or a SEF has made a swap available for trading.

[35] Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572, Dec. 22, 2010.

none of the new rules proposed for DCMs relate directly to the trade execution requirement under section 2(h)(8), the Commission believes that it is necessary for DCMs to have their new policies, procedures, and rulebooks in place prior to the DCMs making a swap available for trading.

With regard to SEFs, the Commission also observes that it would have to adopt final rules allowing for SEF registration, including procedures for provisional registration, prior to any SEF making a swap that is required to be cleared available for trading.[36] The finalization of these rules would enable SEFs to register with the Commission and ensure that they have developed their new policies, procedures, and rulebooks.

2. Compliance Schedule for the Trading Execution Requirement—§§ 37.12 and 38.11

Proposed regulations §§ 37.12 and 38.11 provide for the phased implementation of a trade execution requirement by setting forth a compliance schedule tied to the schedule proposed for the clearing requirement.

The proposed compliance schedules for the trade execution requirement would be triggered upon the later of (1) The applicable deadline established under the compliance schedule for the associated clearing mandate; or (2) 30 days after the swap is made available for trading on either a SEF or a DCM. Consequently, market participants always will have at least thirty days after a DCM or SEF has made a swap available for trading to comply with a trade execution requirement. Prior to a Commission-issued mandatory clearing determination, both DCMs and SEFs would be permitted to offer swaps for trading by market participants on a voluntarily basis. However, those swaps would not be required to be traded on a DCM or SEF, pursuant to section 2(h)(8) of the CEA until the associated clearing requirement took effect.

D. Three-Part Implementation Phasing

The Commission proposes compliance schedules for phasing implementation that afford relief in the form of additional time for compliance with any clearing requirement or trade execution requirement by category of market participant. The Commission based its proposed categorization of entities on the definition of ''financial entity'' in section 2(h)(7)(C) of the CEA.[37] Under this statutory provision, Congress identified financial entities that would not be eligible to claim an exception from a clearing requirement under section 2(h)(1) of the CEA.

Phase 1—Category 1 Entities

The proposed compliance schedule would define ''Category 1 Entities'' to include a swap dealer, a security-based swap dealer, a major swap participant, a major security-based swap participant, or an active fund.

Category 1 Entities include those dealers and major participants in the swap and security-based swap markets that will be registered with the Commission or the Securities and Exchange Commission (SEC).[38] Title VII of the Dodd-Frank Act requires these market participants to register with either the CFTC or SEC as a result of their swaps or security-based swaps activities. Based on their level of market experience and based on their status as registrants with either the CFTC or the SEC, the Commission believes they should be capable of complying with a clearing requirement and a trade execution requirement sooner than other market participants and that 90 days is a reasonable timeframe for these entities to come into compliance with these requirements.

The Commission also is proposing to include those entities it defines as ''active funds'' in the first category of market participants. The proposed definition of ''active fund'' would mean ''any private fund as defined in section 202(a) of the Investment Advisors Act of 1940, that is not a third-party subaccount and that executes 20 or more swaps per month based on a monthly average over the 12 months preceding the Commission issuing a mandatory clearing determination under section 2(h)(2) of the Act.''[39]

The Commission is relying on the definition of private fund from section 2(h)(7)(C) of the CEA, as well as section 402 of the Dodd-Frank Act. However, the Commission is limiting the definition in two ways. First, the definition excludes third-party subaccounts, as discussed further below. Second, the definition is limited to those private funds that execute 20 or more swaps per month based on the average over the 12 months preceding the Commission's issuance of a mandatory clearing determination.[40] In choosing this threshold, the Commission's goal was to ensure the involvement of a cross-section of market participants at the outset of both clearing and trading requirement implementation. The Commission also sought to address some commenters' concerns regarding adequate ''buy-side'' representation early in the mandatory clearing process. Based on a preliminary assessment, the Commission believes the proposed numerical threshold for active funds is appropriate because a private fund that conducts this volume of swaps would be likely to have: (1) Sufficient resources to enter into arrangements that comply with the clearing and trade execution requirement earlier than other types of market participants; and (2) sufficient market experience to contribute meaningfully to the ''buy-side'' perspective as industry standards are being developed.[41] In defining ''active fund'' accordingly, the Commission believes it has included those market participants that are likely to be among the most experienced participants with expertise and resources needed to come into transaction compliance quickly.

The Commission proposes to phase in compliance with the mandatory clearing requirement for any swap transaction between a Category 1 Entity and another Category 1 Entity, or any other entity

[36] Core Principles and other Requirements for Swap Execution Facilities, 76 FR 1214, Jan. 7, 2011. As part of the SEF rulemaking, the Commission proposed regulation § 37.10, which would require each SEF to conduct an annual review of whether it has made a swap available for trading and to provide a report to the Commission regarding its assessment. *Id.* at 1222 and 1241.

[37] CEA section 2(h)(7)(A)(i) limits availability of the end-user clearing exception to counterparties to the swap that are not a financial entity. The term financial entity is defined in CEA section 2(h)(7)(C)(i), and includes the following eight entities: (i) A swap dealer; (ii) a security-based swap dealer; (iii) a major swap participant; (iv) a major security-based swap participant; (v) a commodity pool as defined in CEA section 1a(10); (vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); (vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or (viii) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

[38] If a security-based swap dealer or a major security-based swap participant is not yet required to register with the SEC at such time as the Commission issues mandatory clearing determination, then the security-based swap dealer or a major security-based swap participant would be treated as a Category 2 Entity.

[39] It should be noted that many commodity pools meet the definition of private fund under section 202(a) of the Investment Advisors Act of 1940. Such a commodity pool would only be a Category 1 Entity if it met the other criteria of an active fund.

[40] In calculating the numerical threshold, the Commission intends for funds to calculate all swaps it executes not just those that are the subject of a mandatory clearing determination.

[41] The Commission is unaware of any position-level or transaction-level data on private fund swap activity in a publicly available form. In order to determine private fund activity levels, the staff consulted with academics focusing their research in this area, with industry participants, and with groups that represent the industry.

that desires to clear the transaction [42] within the first 90 days after the Commission issues any mandatory clearing determination. With respect to the trade execution requirement, the Commission proposes to phase in compliance with this requirement either at the same time as the clearing requirement or thirty days after the swap is made available for trading, whichever is later. The Commission proposes phasing in all Category 1 Entities first because these market participants are likely to be the most active and experienced market participants whose involvement in the early stages of building and rolling out the clearing and trading requirements is critical. The Commission is attempting to include in this category those market participants with the expertise and resources to implement mandatory clearing and trading most quickly. The Commission also believes Category 1 Entities likely will have the most existing connectivity to clearinghouses and trading platforms and would be able to come into compliance sooner than other categories of participants.

Phase 2—Category 2 Entities

The proposed compliance schedule would define ''Category 2 Entities'' to include a commodity pool; a private fund as defined in section 202(a) of the Investment Advisors Act of 1940 other than an active fund; an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974; or a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, provided that the entity is not a third-party subaccount.

The Commission proposes to phase in compliance for swap transactions between a Category 2 Entity and Category 1 Entity, another Category 2 Entity, or any other entity that desires to clear the transaction.[43] The Commission is proposing to afford swap transactions between these types of market participants 180 days to come into compliance with a clearing requirement. With respect to the trade execution requirement, the Commission proposes to phase in compliance with this requirement either at the same time as the clearing requirement or thirty days after the swap is made available for trading, whichever is later. In providing these market participants an additional 90 days to come into compliance, the Commission took into consideration the fact that Category 2 Entities may not be required to be registered with the Commission and may be less experienced and less frequent users of the swap markets than those in Category 1.

Additionally, Category 2 Entities may not have the same level of expertise and resources to bring their swaps into compliance with a clearing requirement as quickly as Category 1 Entities. As defined for purposes of these compliance schedules, Category 2 Entities do not include those financial entities that are third-party subaccounts, as described further below.

Phase 3—Third-Party Subaccounts and all Other Swap Transactions

Finally, the Commission proposes to phase in compliance for all other swap transactions not excepted from the mandatory clearing requirement within 270 days after the Commission issues a clearing requirement. The Commission proposes to phase in compliance with the trade execution requirement either at the same time as the clearing requirement or thirty days after the swap is made available for trading, whichever is later.

The Commission proposes to include all entities that are third-party subaccounts in this 270-day period. This approach would give these entities the most time to bring their swaps into compliance because they are likely to require the most time for documentation, coordination, and management. A third-party subaccount is afforded 270 days to bring its swaps into compliance because its portfolio is managed by an asset manager that may have to bring numerous accounts into compliance. The Commission also proposes to include any other swap transaction that would be subject to a clearing requirement into compliance within this proposed 270-day period.

Under the Commission's proposed definition, a third-party subaccount would be a managed account that requires specific approval by the beneficial owner of the account to execute documentation necessary for executing, confirming, margining, or clearing swaps. By way of non-exclusive example, if investment management firm X manages the assets of pension fund Y, and does so in a separate account that requires the approval of pension fund Y to execute necessary documentation, then that account would be afforded 270 days to come into compliance. On the other hand, if pension fund Y manages its own assets, it would fall within Category 2 and be afforded 180 days to come into compliance. Likewise, if investment management firm X does not manage the assets of third parties, then it would fall within Category 2.

The Commission is proposing to afford third-party subaccounts an additional 90 days beyond the 180 days proposed for Category 2 because such entities may have documentation obligations for hundreds or even thousands of third-party subaccounts, and each such account must meet the mandatory clearing and trading requirements. For example, according to a statement made during the Joint SEC–CFTC Roundtable by Mr. William DeLeon of the firm Pacific Investment Management Company, LLC (PIMCO), PIMCO manages hundreds of third-party subaccounts, as defined above.[44] The proposed compliance schedules would not prohibit any type of market participant from voluntarily complying sooner than the compliance deadline. Indeed, the Commission would encourage market participants that can come into compliance more quickly to move their swaps into clearing and begin trading on trading platforms as soon as possible in order to facilitate development of infrastructure that takes into account the views of many types of market participants. As one commenter noted, ''Smaller entities, for example, may have unique issues that need to be accounted for before systems are hardwired. Many swap market participants are small entities; it is important to ensure that these entities and their liquidity are not squeezed out of the swaps market.'' [45]

E. Prospective Application of Compliance Schedules

The Commission anticipates that it will exercise its authority to trigger the proposed compliance schedules each time it issues a mandatory clearing determination for a new group, category, type, or class of swaps. Under this approach, when a DCO begins offering a new swap for clearing and it is in the same group, category, type, or class of swaps and it meets the requirements imposed under a previously issued mandatory clearing determination, then the proposed compliance schedules would not be triggered. However, if the Commission issues a mandatory clearing determination in any entirely new group, category, type, or class of

[42] The intent of this clause is to facilitate clearing by counterparties that desire to comply with a clearing mandate earlier than they would otherwise be required to under the compliance schedule. The Commission solicits comment on whether there would be a better way to accomplish this objective.

[43] *See* footnote 42.

[44] Day 2 Roundtable Tr. at 62.

[45] Investment Company Institute, Jun. 10, 2011 letter, at 12.

swaps then the compliance schedules could once again be triggered by the Commission. For example, if the Commission issues a mandatory clearing determination for 5 year credit default swap products and a new 5 year credit default swap product is offered for clearing based on a new 5 year index, then the proposed compliance schedules may not be triggered. If on the other hand, the Commission has not issued a mandatory clearing determination for 10 year credit default swap products and a new 10 year credit default swap product is offered for clearing, then the compliance schedules could be triggered by the Commission.

When issuing a mandatory clearing determination, the Commission would set an effective date by which all market participants would have to comply. In other words, the proposed compliance schedules would be used only when the Commission believes that phasing is necessary based on the considerations outlined in this release. The Commission will provide the public with notice of its intent to rely upon the compliance schedule pursuant to the process outlined in § 39.5(b)(5).

The Commission solicits comment on the ongoing usefulness of the proposed compliance schedules once market participants have established documentation and connectivity to DCOs, DCMs, and SEFs.

F. Comment Requested

The Commission requests comment on all aspects of the proposed compliance schedules, §§ 37.12, 38.11 and 39.5(e). The Commission may consider alternatives to the proposed compliance schedules and is requesting comment on the following questions:

- What, if any, other rules should have been taken into consideration when proposing an implementation schedule regarding the clearing and trade execution requirements? If applicable, how should the implementation requirements of those other rules be taken into consideration?
- Should there be a presumption that the Commission will rely on the compliance schedule for each mandatory clearing determination that it issues, unless the Commission finds that the compliance schedule is not necessary to achieve the benefits set forth herein (*e.g.,* facilitating the transition to the new regulatory requirement established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions)?
- What factors, if any, would prevent an entity in any of the proposed categories from adhering to the compliance schedules proposed by the Commission? How much additional time would be needed to address these factors?
- Are there other considerations that the Commission should have taken into account when designing this tiered implementation schedule? Are the timeframes outlined in this implementation schedule adequate? If not, what alternative schedule should the Commission consider, and why?
- Assuming a situation where a swap first becomes subject to the clearing requirement and then is made available for trading by a DCM or SEF, is an additional thirty days after the swap becomes made available for trading enough time for DCMs, SEFs, and market participants to come into compliance with the trade execution requirement? For example, would thirty days be sufficient for the needed technological linkages to be established between (i) the DCOs, DCMs, and SEFs and (ii) the DCMs, SEFs, and market participants.
- What other entities, if any, should be included in Category 1 or 2, and why? Should any entities be moved from Category 1 or 2 to a later category? For example, where should the Commission place those entities described in section 2(h)(7)(C)(ii) of the CEA (*e.g.,* small banks, savings associations, farm credit system institutions, and credit unions)?
- What adjustments to the compliance schedule and/or other steps could the Commission take to ensure there is adequate representation from all market participants at the outset of clearing and trade execution requirements?
- In suggesting phasing in transactions between Category 1 or 2 Entities and ''any other entity that desires to clear the transaction,'' the Commission intended to facilitate clearing by counterparties that desire to comply with a clearing mandate earlier than they would otherwise be required to under the compliance schedule. Is there a better way to achieve this objective?
- Is an entity's average monthly swap transaction activity a useful proxy for that entity's ability to comply with the clearing and trade execution requirements? Or whether an entity is required to be registered with the Commission (rather than whether an entity is already registered with the Commission)?
- Is the Commission's definition of ''active fund'' overly inclusive or under-inclusive? Should the numerical threshold for number of monthly swap transactions be higher or lower than 20? If so, why? Should the number of monthly swap transactions be linked to swap activity in a particular asset class?
- Should the Commission exclude from the definition of ''active fund'' any investment advisor of private funds acting solely as an advisor to private funds with assets under management in the United States of less than $150,000,000, as provided for in the reporting exemption for private funds under section 408 of the Dodd-Frank Act?
- Would it be more appropriate for the Commission to measure a market participant's level of swap activity by measuring notional turnover and/or open exposure, as suggested by some commenters?[46]
- Are there any anticompetitive implications to the proposed compliance schedules? If so, how could the proposed rules be implemented to achieve the purposes of the CEA in a less anticompetitive manner? If so, please quantify those costs, if possible, and provide underlying data sources, assumptions and calculations.
- Are there additional costs or benefits associated with the current proposal that the Commission has not already taken into account? Please discuss any such costs in detail and quantify in dollar terms, if possible.
- Are there any assumptions, including quantitative assumptions, underlying the Commission's cost benefit analysis that the Commission should consider?
- Should the Commission consider an alternative implementation schedule? Would such an alternative schedule reduce the costs market participants bear? Please describe any such alternative implementation schedule in detail, including how it will reduce costs and the benefits it will likely deliver. If possible, please quantify the cost and benefits associated with any alternative. If providing dollar values, please describe any data sources, assumptions, and calculations used to generate them.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[47] The rules proposed by the CFTC provide compliance schedules for

[46] Letter from Adam C. Cooper, Citadel, dated June 3, 2011, Appendix B.

[47] 5 U.S.C. 601 *et seq.*

certain new statutory requirements of the Dodd Frank Act and do not by themselves impose significant new regulatory requirements. Accordingly, the Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities. The CFTC invites public comment on this determination.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [48] imposes certain requirements on federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA. This notice of proposed rulemaking, if approved, would not require a new collection of information from any persons or entities.

C. Consideration of Costs and Benefits

Section 15(a) of the CEA [49] requires the Commission to consider the costs and benefits of its action before promulgating a regulation under the CEA. Section 15(a) of the CEA specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

The purpose of the proposed compliance schedules is to afford market participants adequate time to comply with the clearing requirement under section 2(h)(1)(A) of the CEA and the trade execution requirements under section 2(h)(8). Without the proposed compliance schedules, market participants could be required to comply with the clearing requirement immediately upon issuance of a mandatory clearing determination by the Commission, and market participants could be required to comply with the trade execution requirement when (1) The Commission has issued a determination that the swap is required to be cleared and (2) any DCM or SEF has made the swap available to trade.

The Commission recognizes that requiring such immediate compliance with the clearing and trade execution requirements may impose costs on market participants, particularly for market participants that may not be registered with the Commission and those market participants that have hundreds or thousands of third-party subaccounts to bring into compliance with the new requirements under section 2(h) of the CEA.[50] Accordingly, the Commission's proposal provides substantial benefits in that it affords market participants additional time to document new clearing arrangements, connect to market infrastructures, and prepare themselves and their customers for the new regulatory requirements. The Commission believes that such an approach will help protect the public interest by facilitating an orderly transition to a new regulatory environment.

1. Protection of Market Participants and the Public

In devising the proposed compliance schedules, the Commission sought to balance the goal of protecting the public by bringing market participants into compliance with the clearing and trade execution requirements for swaps as quickly as possible while affording market participants adequate time to come into compliance.

Market participants in Category 1 (*e.g.,* SDs, MSPs, and active funds) are likely to be among the most experienced and active participants with the resources needed to come into compliance with the clearing and trading requirements more quickly.[51] The swaps entered into by these market participants are likely to represent a significant portion of the total swap market volume. As a result, moving these transactions into central clearing and onto trading platforms before those of Category 2 and 3 Entities would provide additional protection for the public by ensuring that the most active participants in the swap market come into compliance as soon as possible, thus mitigating risk and promoting transparency in significant portions of the swap market.

By requiring Category 2 Entities to comply within 180 days, the Commission is seeking to balance the needs of those market participants that are not registered with the Commission and may not be as active in the swap market with the public interest of bringing all market participants into compliance as soon as possible.

The market participants in Category 2 are likely to be less experienced and less active participants than those in Category 1. To the extent these market participants are less active in the swap markets the balance between moving their transactions into central clearing and onto trading platforms and giving them additional time to comply with the new requirements, tips in favor of the latter approach. Additionally, these entities may not have the same level of resources as Category 1 Entities. Therefore, they will benefit from the opportunity to document new clearing arrangements, connect to market infrastructures, and prepare themselves and their customers for the new regulatory requirements by considering examples of how Category 1 Entities have met these requirements.

It should be noted that Category 2 Entities and other market participants wanting to come into compliance before their respective compliance schedule deadlines in order to take advantage of the risk-mitigating benefits of central clearing and executing swaps on trading platforms are allowed, and encouraged, to do so.

Entities that are third-party subaccounts have the additional challenge of transitioning hundreds, and in some cases, thousands of subaccounts into compliance with the clearing and trade execution requirements. This process may require that these entities negotiate and formalize new agreements with each of their customers. In order to accomplish this they also will need to educate their customers about how clearing and trade execution requirements will affect the costs and processes associated with their accounts. Each of these tasks requires time. By giving third-party subaccounts 270 days to come into compliance, the Commission seeks to balance the need of these entities and their customers for additional time with the benefits of reducing risks in the swap market and protecting the public as quickly as possible.

It may be that the Category 1 Entities that constitute the first phase under the proposed compliance schedules will bear a larger proportion of the ''start-up''

[48] 44 U.S.C. 3507(d).

[49] 7 U.S.C. 19(a).

[50] *E.g.,* Letter from Richard H. Baker, Managed Funds Association, dated Mar. 24, 2011 at Appendix 1, page 1.

[51] In a letter from the Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association, dated May 4, 2011, commenters noted that ''market participants vary dramatically in their resources, market sophistication and rationale for using Swaps. Swap Entities, in general, have greater resources, access to technology and clearing infrastructure than their end user counterparties.''

costs associated with implementing the clearing and trade execution requirements. They are the entities likely to expend the most resources documenting new clearing arrangements, connecting to market infrastructures, and preparing themselves and their customers for the new regulatory requirements. The Commission is aware of these costs and believes that it is appropriate for the entities that are likely to be among the most active participants in these markets to shoulder a larger percentage of these start-up costs.

2. Efficiency, Competitiveness, and Financial Integrity of the Markets

By necessity, the first group of market participants that are required to comply with the clearing and trade execution requirements, along with DCOs, DCMs, and SEFs, are likely to work together to establish methods for compliance that other market participants may later consider. The experience with swaps that the first group of market participants brings to this process should help to ensure the integrity and effectiveness of their solutions. These solutions will likely be helpful to other market participants that comply later. For example, entities that are more experienced in the swap market, such as those in Category 1, are likely to have greater technological expertise and will best be able to develop the necessary technological infrastructure.

It is critical that a cross-section of market participants is involved in developing the solutions that become industry conventions in order to ensure that those approaches promote the efficiency, competitiveness, and integrity of participants on the buy-side and the sell-side. The Commission's proposed compliance schedules address this need. For example, Category 1 includes active funds and MSPs that are likely to have the experience and expertise to represent ''buy-side'' interests, whereas SDs generally will represent ''sell-side'' interests.

In providing Category 1 Entities with 90 days to comply with the clearing and trade execution requirements, the Commission would afford these market participants additional time to identify issues and work to develop solutions. This is likely to result in more efficient problem-solving processes, which may reduce the system-wide start-up costs of implementing new regulations. Moreover, it is also likely to foster a greater degree of compatibility and interoperability among the varied methods of compliance which, in turn, is likely to reduce the cost and complexity of interconnectedness.[52]

Lastly, in the absence of the proposed compliance schedules, some entities have expressed concern that they would be unable to comply with the clearing and trading requirements and would choose to leave the swap market or avoid the market for some period of time. If this occurred, it could reduce liquidity and increase spreads in the market. By providing additional time for compliance, this rule reduces the chance that these adverse effects will occur in the swap market during the transition period.

3. Price Discovery

The trade execution requirement is expected to facilitate price discovery in the swap market. However, a disorderly implementation may inhibit price discovery by creating confusion about which counterparties are prepared to trade specific swaps and which contracts are fungible. An orderly process, however, promotes good communication between counterparties, which is essential to price discovery during the transition period.

As for costs, to the extent that market participants could comply sooner than the proposed compliance schedule in an effective and efficient manner, this proposed schedule would delay the benefits that would come from increased price transparency that are expected to accompany a trade execution requirement under section 2(h)(8) of the CEA. The Commission's proposed compliance schedule reflects that the Commission anticipates that market participants will need additional time, however, for an orderly implementation process.

4. Sound Risk Management Practices

To the extent that the proposed compliance schedule for the clearing requirement would delay implementation of mandatory clearing, the swap market could suffer costs in terms of risk management. For example, there are risk management costs associated with not having counterparty credit risk monitored and managed effectively by a DCO. More prompt implementation of mandatory clearing would have the benefit of preventing losses from accumulating over time through the settlement of variation margin between a DCO's clearing members each day. The settlement of variation margin each day reduces both the chance of default and the size of any default should one occur. Delay in implementing mandatory clearing would also postpone the use of initial margin as a performance bond against potential future losses such that if a party fails to meet its obligation to pay variation margin, resulting in a default, the DCO may use the defaulting party's initial margin to cover most or all of any loss based on the need to replace the open position.

On the other hand, the proposed compliance schedule for the clearing requirement would provide an orderly process for implementing mandatory clearing of swaps, and to the extent that it does so successfully, it will lead to overall sounder risk management practices for the swap market and the broader financial system, particularly during the implementation period. As noted above, in the absence of this rule, some entities may choose not to engage in swap transactions while they work to come into compliance with the new requirements. This result could expose those entities to risks they would otherwise have used swaps to mitigate. Therefore, by providing a timetable for orderly transition, this rule encourages continued participation in the swap markets and makes possible the continued use of swaps during the transition period for risk mitigation purposes.

Moreover, if market participants were concerned that they might not be able to meet the proposed compliance schedule timelines, it is likely that they would incur additional costs associated with the potential lack of regulatory compliance. Providing additional time for compliance may reduce the costs that participants may incur mitigating legal risks during the transition period, and focuses those resources on achieving compliance.

5. Other Public Interest Considerations

There are public interest benefits to phasing in compliance using the implementation structure proposed in this release. The proposed implementation structure generally allows market participants to comply with the requirements of Dodd-Frank as quickly and efficiently as possible and thereby provides a sound basis for achieving the overarching Dodd-Frank goals of risk reduction and increased market transparency.

In sum, the Commission has considered the costs and benefits as required by section 15(a) and is proposing the compliance schedules discussed herein. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other

[52] *See* TABB Group, ''Technology and Financial Reform: Data, Derivatives and Decision Making'', Aug. 2011 at 12.

information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

List of Subjects

17 CFR Part 37

Commodity futures, Swaps, Swap execution facilities, Registration application, Registered entities, Reporting and recordkeeping requirements.

17 CFR Part 38

Block transaction, Commodity futures, Designated contract markets, Reporting and Recordkeeping requirements, Transactions off the centralized market.

17 CFR Part 39

Business and industry, Commodity futures, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 37, 38 and 39 as follows:

PART 37—SWAP EXECUTION FACILITIES

1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3 and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Add § 37.12 to read as follows:

§ 37.12 Trade execution compliance schedule.

(a) A swap transaction shall be subject to the requirements of section 2(h)(8)(A) of the Act upon the later of (1) the applicable deadline established under the compliance schedule provided under § 39.5(e)(2); or (2) 30 days after the swap is first made available for trading on either a swap execution facility registered under section 5h of the Act or a board of trade designated as a contract market under section 5 of the Act.

(b) Nothing in this rule shall prohibit any counterparty from complying voluntarily with the requirements of section 2(h)(8)(A) of the Act sooner than as provided in paragraph (a) of this section.

PART 38—DESIGNATED CONTRACT MARKETS

3. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

4. Add § 38.11 to read as follows:

§ 38.11 Trade execution compliance schedule.

(a) A swap transaction shall be subject to the requirements of section 2(h)(8)(A) of the Act upon the later of (1) the applicable deadline established under the compliance schedule provided under § 39.5(e)(2); or (2) 30 days after the swap is first made available for trading on a swap execution facility registered under section 5h of the Act or a board of trade designated as a contract market under section 5 of the Act.

(b) Nothing in this rule shall prohibit any counterparty from complying voluntarily with the requirements of section 2(h)(8)(A) of the Act sooner than as provided in paragraph (a) of this section.

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

6. Amend § 39.5 to add paragraph (e) to read as follows:

§ 39.5 Review of swaps for Commission determination on clearing requirement.

* * * * *

(e) *Mandatory clearing compliance schedule.* (1) *Definitions.* For the purposes of this paragraph:

Category 1 Entity means (1) a swap dealer, (2) a security-based swap dealer; (3) a major swap participant; (4) a major security-based swap participant; or (5) an active fund.

Category 2 Entity means (1) a commodity pool; (2) a private fund as defined in section 202(a) of the Investment Advisors Act of 1940 other than an active fund; (3) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974; or (4) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, *provided that,* in each case, the entity is not a third-party subaccount.

Active Fund means any private fund as defined in section 202(a) of the Investment Advisors Act of 1940, that is not a third-party subaccount and that executes 20 or more swaps per month based on a monthly average over the 12 months preceding the Commission issuing a mandatory clearing determination under section 2(h)(2) of the Act.

Third-party Subaccount means a managed account that requires specific approval by the beneficial owner of the account to execute documentation necessary for executing, confirming, margining, or clearing swaps.

(2) Upon issuing a mandatory clearing determination under section 2(h)(2) of the Act, the Commission may determine, based on the group, category, type or class of swaps subject to such determination, that the following schedule for compliance with the requirements of section 2(h)(1)(A) of the Act shall apply:

(i) A swap transaction between a Category 1 Entity and another Category 1 Entity, or any other entity that desires to clear the transaction, must comply with the requirements of section 2(h)(1)(A) of the Act no later than ninety (90) days after the effective date set by the Commission for such mandatory clearing determination.

(ii) A swap transaction between a Category 2 Entity and a Category 1 Entity, another Category 2 Entity, or any other entity that desires to clear the transaction, must comply with the requirements of section 2(h)(1)(A) of the Act no later than one hundred and eighty (180) days after the effective date set by the Commission for such mandatory clearing determination.

(iii) All other swap transactions not eligible to claim the exception from mandatory clearing set forth in section 2(h)(7) of the Act and § 39.6, must comply with the requirements of section 2(h)(1)(A) of the Act no later than two hundred and seventy (270) days after the effective date set by the Commission for such mandatory clearing determination.

(3) Nothing in this rule shall be construed to prohibit any person from voluntarily complying with the requirements of section 2(h)(1)(A) of the Act sooner than the implementation schedule provided under paragraph (2).

Issued in Washington, DC, on September 8, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA—Commissioners Voting Summary and Statements of Commissioners

NOTE: The following appendices will not appear in the Code of Federal Regulations

Appendix 1—Commissioners Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, and Chilton voted in the affirmative; Commissioner O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rule to establish schedules to phase in compliance with the clearing and trade execution requirement provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposal would provide greater clarity to market participants regarding the timeframe for bringing their swap transactions into compliance with the clearing and trade execution requirements. The rule also would make the market more open and transparent, while giving market participants an adequate amount of time to comply. The proposed rule would help facilitate an orderly transition to a new regulatory environment for swaps.

Appendix 3—Statement of Commissioner Jill Sommers

I support this proposal to establish a schedule to phase in compliance with certain statutory provisions under Title VII of the Dodd-Frank Act because this will give market participants some degree of certainty about implementation deadlines. However, I believe the Commission should have provided a broader implementation plan encompassing all of the rulemakings under Dodd Frank, rather than the much narrower portion covered by today's proposed rulemaking. In addition, the proposed rule fails to address a critical component of the trade execution requirement in Section 2(h)(8) of the Commodity Exchange Act. That is, what does it mean to ''make a swap available to trade?''

I believe the Commission should clarify who makes the determination that a swap is ''made available for trading'' and how the decision is to be made, just as the Commission has done with respect to the clearing requirement. This would provide the public with an opportunity to comment on a proposed mechanism for such a determination. In a consultation paper published by the European Commission's Directorate General on Internal Markets and Services on December 8, 2010, the European Commission put forth the idea that the European Securities and Markets Authority, or ESMA, ''could assess and decide when a derivative which is eligible for clearing is sufficiently liquid to be traded exclusively'' on a trading platform.[53] The European Commission noted that ESMA could base its decision on ''the frequency of trades in a given derivative and the average size of transactions,'' and solicited comments from the public on which criteria could determine whether a derivative is sufficiently liquid to be required to be traded on a platform.

Both the Dodd-Frank Act and proposed regulations in the European Union require consideration of trading liquidity, in addition to other factors, before a determination is made that a swap is required to be cleared. The Commission should address whether any additional factors will be considered as part of a determination on the trade execution requirement.

Though I support today's proposal, I believe the Commission should clarify who makes the determination that a swap is ''made available for trading'' and how that decision will be made.

Appendix 4— Statement of Commissioner Scott O'Malia

I respectfully dissent from the Commission's decision today to approve for Federal Register publication two rule proposals related to implementation entitled ''Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA'' and ''Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA.'' For quite some time, I have been asking that the Commission publish for notice and comment a comprehensive implementation schedule that addresses the entire mosaic of rule proposals under the Dodd-Frank Act. I believe the Commission should have proposed a comprehensive schedule that detailed, at a minimum:

- for each registered entity (e.g., swap dealer and major swap participants), compliance dates for each of its entity-specific obligations (e.g., all obligations under Section 4s of the Commodity Exchange Act) under Dodd-Frank; and
- for each market-wide obligation (e.g., the clearing and trading mandates), the entities affected (whether registered or unregistered) along with appropriate compliance dates.

Such a schedule would have complemented and informed existing proposals and provided structure to future determinations. Additionally, a proposal regarding such a schedule should have adequately analyzed the costs and benefits of alternatives, including appropriate quantification. Unfortunately, the two rule proposals that the Commission approved today fail to either propose a comprehensive schedule or provide an adequate cost benefit analysis.

The Commission's proposals also fail to request comment on a number of issues that I believe are important considerations in developing an implementation plan. As a result, I am encouraging commenters to submit responses to the questions below as part of their comments on the two rule proposals.

Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA

- Should the Commission provide guidance on how it will make and communicate a mandatory clearing determination prior to considering the first such determination? If so, what information should be included in guidance?
- As section II(E) of the proposal states: ''When issuing a mandatory clearing determination, the Commission would set an effective date by which all market participants would have to comply. In other words, the proposed compliance schedules would be used only when the Commission believes that phasing is necessary based on the considerations outlined in this release. The Commission will provide the public with notice of its intent to rely upon the compliance schedule pursuant to the process outlined in § 39.5(b)(5).'' To afford more certainty to market participants, should the Commission instead create a presumption that it will rely on the compliance schedule for each mandatory clearing determination that it issues, unless it finds that the compliance schedule is not necessary to achieve the benefits set forth in the proposal (e.g., facilitating the transition to the new regulatory regime established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions)?
- What, if any, other issues not addressed in current proposed or final rulemakings should the Commission have taken into consideration when proposing the compliance schedule? For example, should the Commission have considered the extent to which its clearing and trade execution requirements apply to entities and transactions located outside the United States? Also, should the Commission have considered the extent to which such requirements apply to transactions between affiliates (whether domestic or cross-border)? If applicable, how should the Commission adjust the proposed compliance schedule to account for such issues?
- What, if any, adjustments should the Commission make to the proposed compliance schedule for trade execution requirements if the Commission makes a determination that a group, category, type, or class of swaps, rather than a specific swap, is subject to mandatory clearing? Would such adjustments vary depending on the manner in which the Commission defines group, category, type, or class?

Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA

- What, if any, other issues not addressed in current proposed or final rulemakings should the Commission have taken into consideration when proposing the

[53] Public Consultation: Review of the Markets in Financial Instruments Directive (MiFID) (December 8, 2010), available at *http://ec.europa.eu/internal_market/consultations/docs/2010/mifid/consultation_paper_en.pdf.*

compliance schedule? For example, should the Commission have considered the extent to which its documentation and margin requirements apply to entities and transactions located outside the United States? Also, should the Commission have considered the extent to which such requirements apply to transactions between affiliates (whether domestic or cross-border)? If applicable, how should the Commission adjust the proposed compliance schedule to account for such issues?

Finally, I want to be clear that I support completing the final Dodd-Frank rulemakings in a reasonable time frame. I believe that the timely implementation of such rulemakings is important. Knowing when and how the markets are required to do what is vital to the success of implementing the new market structure required under the Dodd-Frank Act. When billions of dollars are at stake, you simply do not rely on guesses and estimates based on vague conditions.

[FR Doc. 2011–24124 Filed 9–19–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 570

[BOP Docket No. 1151]

RIN 1120–AB61

Pre-Release Community Confinement

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) responds to recent litigation surrounding the pre-release community confinement regulation which it published on October 21, 2008 by publishing a proposed rule on this subject.

DATES: Comments are due by November 21, 2011.

ADDRESSES: Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov.* You may also comment via the Internet to the Bureau at *BOPRULES@BOP.GOV* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The Proposed Rule

In this document, the Bureau of Prisons (Bureau) responds to recent litigation surrounding the pre-release community confinement regulation which it published on October 21, 2008 (73 FR 62443) (2008 regulations) by publishing a proposed rule on this subject.

The interim rule published in 2008 revised the Bureau's regulations on pre-release community confinement in 28 CFR part 570, subpart B, to conform with the requirements of the Second Chance Act of 2007, approved April 9th, 2008 (Pub. L. 110–199; 122 Stat. 657) (''Second Chance Act'').

In an opinion filed on June 16, 2010, the District Court for the District of Oregon upheld Bureau policies issued following the Second Chance Act, finding that they are ''internal agency guidelines which do not trigger the procedural requirements of 5 U.S.C. § 553,'' but invalidated the 2008 interim rule on the grounds that the Bureau did not ''establish good cause to forego advance notice and comment'' under the Administrative Procedure Act (5 U.S.C. 552, *et seq.*). *Sacora* v. *Thomas,* No. CV 08–578–MA (D. Or. June 16, 2010). The court enjoined the BOP ''from considering inmates for pre-release RRC [Residential Re-entry Centers] placement pursuant to 28 CFR 570.20–22 until such time as regulations are promulgated in accordance with 5 U.S.C. 553(b).'' We now issue this proposed rule in order to comply with the court's determination. The proposed rule is identical to the 2008 interim rule, and we therefore reprint the rationale for the interim rule below as the rationale for this proposed rule.

Prior to October 21, 2008, the community confinement regulations implemented the Bureau's categorical exercise of discretion for designating inmates to community confinement. The regulations stated that the Bureau would designate inmates to community confinement only as a condition of pre-release custody and programming, during the last ten percent of the prison sentence being served, for a period not exceeding six months, unless specific Bureau programs allow greater periods of community confinement.

To conform these regulations to the language of the Second Chance Act, we made the following revisions:

Section 570.20 Purpose

In this regulation, we describe the Bureau's procedures for designating inmates to pre-release community confinement or home detention. We also provide a new definition of the term ''community confinement.'' Section 231(f) of the Second Chance Act amended 18 U.S.C. 3621 by adding a new subsection (g). New 18 U.S.C. 3621(g)(2) defines the term ''community confinement'' for purposes of that subsection by adopting the meaning ''given that term in the application notes under section 5F1.1 of the Federal Sentencing Guidelines Manual'' in effect on the date of enactment of the Act. On April 9, 2008, the application notes to United States Sentencing Guideline (USSG) § 5F1.1 read in pertinent part as follows:

''Community confinement'' means residence in a community treatment center, halfway house, restitution center, mental

health facility, alcohol or drug rehabilitation center, or other community facility; and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.

Although new subsection 18 U.S.C. 3621(g) relates on its face only to ''continued access to medical care,'' we adopt the definition of community confinement given in this provision for the purposes of subpart B as amended. The Second Chance Act itself variously uses the terms ''community confinement,'' ''community corrections agencies,'' ''community corrections facilities,'' and ''community confinement facilities,'' but it does so in contexts that indicate that these terms are meant to refer to the concept of community confinement generally. We therefore adopt the definition in 18 U.S.C. 3621(g) for clarity and consistency, and to maintain uniformity in application of the Second Chance Act provisions, we adopt this definition of ''community confinement'' as applicable in the context of these regulations. For clarity, we also add a parenthetical that explains that the Bureau includes residential re-entry centers in the definition of ''community confinement.''

In this section, we also add a definition of ''home detention.'' Section 231(g)(5)(B) of the Second Chance Act provides that ''[t]he term 'home detention' has the same meaning given the term in the Federal Sentencing Guidelines as of the date of the enactment of this Act * * *.'' Once more, although this reference to the Federal Sentencing Guidelines is articulated in a different context, we deem it prudent to model our definition on that given by the Federal Sentencing Guidelines, as suggested by the Second Chance Act, for clarity and consistency in application.

In this section, therefore, we include a definition of ''home detention'' which is derived from USSG 5F1.2. Specifically, we define ''home detention'' as a program of confinement and supervision that restricts the defendant to his or her place of residence continuously, except for authorized absences, enforced by appropriate means of surveillance by the probation office or other monitoring authority. We add the phrase ''or other monitoring authority'' to the definition given by USSG 5F1.2 to allow for the possibility that the function of monitoring may be accomplished by other federal government agencies, employees, or contractors.

Section 570.21 Time-frames

Section 251(a) of the Second Chance Act amends 18 U.S.C. 3624(c) to require that the Director must, ''to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community.'' Further, section 3624(c) is amended to state that ''[t]he authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.''

In this section, we therefore make the following changes to conform to the specific language in section 251(a) of the Second Chance Act: Paragraph (a) of the revised § 570.21 states that inmates may be designated to community confinement as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed twelve months; and paragraph (b) of the revised § 570.21 states that inmates may be designated to home detention as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed the shorter of ten percent of the term of the inmate's imprisonment or six months.

Section 570.22 Designation

In this section, we inform inmates that they will be considered for pre-release community confinement in a manner consistent with 18 U.S.C. 3621(b), determined on an individual basis, and of duration sufficient to optimize the likelihood of successful reintegration into the community. This section reflects the requirements of the Second Chance Act regarding the promulgation of these regulations. Section 251(a)(6) of the Second Chance Act requires the Bureau to implement regulations that ensure that placements in community confinement as a condition of pre-release custody are:

- Conducted in a manner consistent with 18 U.S.C. 3621(b);
- Determined on an individual basis; and
- Long enough ''to provide the greatest likelihood of successful reintegration into the community.'' Section 570.22 reflects the three factors listed above.

With regard to the requirement that determinations regarding pre-release community confinement are ''conducted in a manner consistent with 18 U.S.C. 3621(b),'' the Bureau will ensure that the following factors listed in section 3621(b) will be considered in making such determinations:

- The resources of the facility contemplated;
- The nature and circumstances of the offense;
- The history and characteristics of the prisoner;
- Any statement by the sentencing court concerning the purpose for which the sentence was imposed or recommending a specific type of institution; and
- Any pertinent policy statements issued by the United States Sentencing Commission.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of eliminating confusion in the courts that has been caused by the changes in the Bureau's statutory interpretation, while allowing us to continue to operate in compliance with the revised statute. There will be no new costs associated with this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 570

Prisoners.

Thomas R. Kane,

Acting Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons, we propose to revise 28 CFR part 570 as set forth below.

Subchapter D—Community Programs and Release

PART 570—COMMUNITY PROGRAMS

1. Revise the authority citation for 28 CFR part 570 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. In part 570, subpart B is revised to read as follows:

Subpart B—Pre-Release Community Confinement

Sec.
570.20 Purpose.
570.21 Time-frames.
570.22 Designation.

§ 570.20 Purpose.

The purpose of this subpart is to provide the procedures of the Bureau of Prisons (Bureau) for designating inmates to pre-release community confinement or home detention.

(a) *Community confinement* is defined as residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers); and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.

(b) *Home detention* is defined as a program of confinement and supervision that restricts the defendant to his place of residence continuously, except for authorized absences, enforced by appropriate means of surveillance by the probation office or other monitoring authority.

§ 570.21 Time-frames.

(a) *Community confinement.* Inmates may be designated to community confinement as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed twelve months.

(b) *Home detention.* Inmates may be designated to home detention as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment, not to exceed the shorter of ten percent of the inmate's term of imprisonment or six months.

(c) *Exceeding time-frames.* These time-frames may be exceeded when separate statutory authority allows greater periods of community confinement as a condition of pre-release custody.

§ 570.22 Designation.

Inmates will be considered for pre-release community confinement in a manner consistent with 18 U.S.C. Section 3621(b), determined on an individual basis, and of sufficient duration to provide the greatest likelihood of successful reintegration into the community, within the time-frames set forth in this part.

[FR Doc. 2011–23684 Filed 9–19–11; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2011–HA–0038]

RIN 0720–AB50

TRICARE; Smoking Cessation Program Under TRICARE

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements Section 713 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (FY 2009), Public Law 110–417. Section 713 states the Secretary shall establish a smoking cessation program under the TRICARE program. The smoking cessation program under TRICARE shall, at a minimum, include the following: the availability, at no cost to the beneficiary, of pharmaceuticals used for smoking cessation, with the limitation on the availability of such pharmaceuticals to the mail-order pharmacy program under the TRICARE program; smoking cessation counseling; access to a toll-free quit line 24 hours a day, 7 days a week; and access to print and Internet web-based tobacco cessation material. Per the statute, Medicare-eligible beneficiaries are excluded from the TRICARE smoking cessation program.

DATES: Written comments received at the address indicated below by November 21, 2011 will be accepted.

ADDRESSES: You may submit comments, identified by docket number or Regulatory Information Number (RIN) and title, by any of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Barbara (Bobbie) Matthews, Medical

Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676–3558.

SUPPLEMENTARY INFORMATION:

I. Background

The Duncan Hunter NDAA for FY 2009 (Pub. L. 110–417) provides authority for establishment of a smoking cessation program under the TRICARE program. Prior to enactment of Section 713 of the Duncan Hunter NDAA FY09 (Pub. L. 110–417), all supplies and services related to ''stop smoking'' programs were excluded from TRICARE coverage per the regulation, 32 Code of Federal Regulations (CFR) 199.4(g)(65).

Smoking is the number one cause of *preventable* illness and disease in the United States and yet, the prevalence of smoking among TRICARE beneficiaries exceeds that of the general population. According to the Centers for Disease Control and Prevention (CDC), adverse health effects from smoking account for an estimated 443,000 deaths in the United States each year.

Smoking causes respiratory diseases such as emphysema, bronchitis, and chronic airway obstruction. It also causes several types of cancers including, but not limited to, esophageal, oral cavity, uterine, and lung cancer. In fact, the CDC estimates that 90 percent of lung cancer deaths in men and 80 percent in women are caused by smoking.

Smoking also puts individuals at increased risk for several other types of diseases and adverse health outcomes such as coronary artery disease, chronic obstructive lung diseases, peripheral vascular disease, heart attack, and stroke. In addition, it increases the risk of infertility, preterm delivery, stillbirth, low birth weight, and sudden infant death syndrome.

Smoking and its related adverse effects pose a significant challenge for more than two million TRICARE beneficiaries. Establishment of the TRICARE smoking cessation program attempts to reduce the number of TRICARE beneficiaries who are nicotine dependant, thereby improving the health of the TRICARE beneficiary population and reducing Department of Defense costs, in particular those related to the adverse effects of smoking. For further information on TRICARE and the benefits provided under the TRICARE program, please visit *http://www.tricare.mil.*

II. Section 713 of the Duncan Hunter NDAA for FY 2009

This proposed rule implements Section 713 of the Duncan Hunter NDAA for FY 2009. Section 713 stipulates the following key features for inclusion in the TRICARE smoking cessation program:

(1) The availability, at no cost to the beneficiary, of pharmaceuticals used for smoking cessation, with a limitation on the availability of such pharmaceuticals to the national mail-order pharmacy program under the TRICARE program if appropriate.

(2) Counseling.

(3) Access to a toll-free quit line that is available 24 hours a day, 7 days a week.

(4) Access to print and Internet web-based tobacco cessation material.

(5) Chain of command involvement by officers in the chain of command of participants in the program who are on active duty.

Additionally, Section 713 of NDAA FY 2009 stated the TRICARE smoking cessation program shall not be made available to Medicare-eligible beneficiaries. The statutory language further stated that refunds of copayments paid by Medicare-eligible beneficiaries are available during fiscal year 2009, subject to the specific availability of appropriations for this purpose. However, this authority was not extended beyond FY 2009; consequently, no action is required by TRICARE regarding this provision.

III. Provisions of Proposed Rule

This proposed rule establishes a smoking cessation program under the TRICARE program. The TRICARE smoking cessation program will be available to all TRICARE beneficiaries who reside in one of the 50 United States or the District of Columbia who are not eligible for Medicare benefits authorized under Title XVIII of the Social Security Act. In general, the TRICARE smoking cessation program will not be available to TRICARE beneficiaries who reside overseas except that under authority of 32 CFR 199.17 of this part, active duty service members and active duty dependents residing overseas including the U.S. territories of Guam, Puerto Rico, and the Virgin Islands who are enrolled in TRICARE Prime at a military treatment facility may have access to those services that the ASD(HA) has determined may be reasonably provided overseas.

It is the intent of the Department to provide access to smoking cessation pharmaceuticals and web based smoking cessation materials overseas where feasible. However, beneficiaries residing in certain areas overseas may not have easy access to the mail services, equipment or technology needed to receive these smoking cessation benefits and in those areas there is no requirement to make them available. For example, there is no intent by the Department to make the web based services available in areas where there are no web based carriers to provide such a service. Additionally, the laws and our treaties with various countries restrict the mailing of pharmaceuticals into the country. If such laws or treaties do not allow the delivery of the pharmaceuticals through the TRICARE Mail Order Pharmacy (TMOP), it is not the intent of the Secretary to provide the pharmaceutical benefit in those areas through this mechanism.

At this time, it is not the intent of the Department to provide access to the toll free quit line overseas due to the technological barriers and cost involved in providing this service. In addition, it is not the intent of the Department at this time to make face-to-face smoking cessation counseling available overseas through the local economy. However, in accordance with 32 CFR 199.17 of this part should the ASD(HA) determine that it is technologically, economically, or otherwise feasible to provide additional benefits or it becomes impractical to continue the benefits and services overseas, the ASD(HA) may use this authority to add or modify any benefit or service. The use of this authority shall be published in the **Federal Register**.

There will be no requirement for an eligible beneficiary to be diagnosed with a smoking related illness in order to access benefits under the TRICARE smoking cessation program. Benefits under this program will include, at no cost to the beneficiary, pharmaceuticals used for smoking cessation, with a limitation on the availability of such pharmaceuticals to the national mail-order pharmacy program under the TRICARE program; smoking cessation counseling; access to a toll-free quit line 24 hours a day, 7 days a week; and access to print and internet web-based tobacco cessation materials.

IV. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Section 801 of title 5, United States Code, and Executive Orders 12866 and 13563 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

This proposed rule is not a significant regulatory action.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Pub. L. 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. This proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this proposed rule is not subject to this requirement.

Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.4 is amended by:

a. Revising paragraph (d)(3)(vi).

b. Adding new paragraph (d)(3)(vi)(C).

c. Adding new paragraph (e)(28).

d. Revising paragraph (g)(39).

e. Removing and reserving paragraph (g)(65).

The revisions and additions read as follows:

§ 199.4 TRICARE—Basic Program Benefits.

* * * * *

(d) *Other benefits.*

* * * * *

(3) *Other covered services or supplies.*

* * * * *

(vi) *Drugs and medicines.* Drugs and medicines that by United States law require a prescription are also referred to as ''legend drugs.'' Legend drugs are covered when prescribed by a physician or other authorized individual professional provider acting within the scope of the provider's license and ordered or prescribed in connection with an otherwise covered condition or treatment, and not otherwise excluded by TRICARE. This includes Rh immune globulin.

(A) * * *

(B) * * *

(C) Over-the-counter (OTC) drugs (drugs that by United States law do not require a prescription), in general, are not covered. However, insulin is covered for a known diabetic even in states that do not require a prescription for its purchase. In addition, OTC drugs used for smoking cessation are covered when all requirements under the TRICARE smoking cessation program are met as provided in paragraph (e)(28) of this section.

* * * * *

(e) *Special benefit information.*

* * * * *

(28) *Smoking cessation program.* The TRICARE smoking cessation program is a behavioral modification program to assist eligible beneficiaries who desire to quit smoking. The program consists of a pharmaceutical benefit; smoking cessation counseling; access to a toll-free quit line for non-medical assistance; and, access to print and Internet Web-based tobacco cessation materials.

(i) *Availability.* The TRICARE smoking cessation program is available to all TRICARE beneficiaries who reside in one of the 50 United States or the District of Columbia who are not eligible for Medicare benefits authorized under Title XVIII of the Social Security Act. In addition, pursuant to section 199.17 of this Part, if authorized by the Assistant Secretary of Defense (Health Affairs), the TRICARE smoking cessation program may be implemented in whole or in part in areas outside the 50 states and the District of Columbia for active duty members and their dependents who are enrolled in TRICARE Prime (overseas Prime beneficiaries). In such cases, the Assistant Secretary of Defense (Health Affairs) may also authorize modifications to the TRICARE smoking cessation program rules and procedures as may be appropriate to the overseas area involved. The use of this authority, not otherwise mentioned below, shall be published in the **Federal Register.**

(ii) *Benefits.* There is no requirement for an eligible beneficiary to be diagnosed with a smoking related illness to access benefits under this program. The specific benefits available under the TRICARE smoking cessation program are:

(A) *Pharmaceutical agents.* Products available under this program are identified through the DoD Pharmacy and Therapeutics Committee, consistent with the DoD Uniform Formulary in section 199.21 of this Part. Smoking cessation pharmaceutical agents, including FDA-approved over-the-counter (OTC) pharmaceutical agents, are available through the TRICARE Mail Order Pharmacy (TMOP) or the MTF at no cost to the beneficiary. Smoking cessation pharmaceuticals will not be available at any retail pharmacies. A prescription from a TRICARE-authorized provider is required to obtain any pharmaceutical agent used for smoking cessation, including OTC agents. For overseas Prime beneficiaries, pharmaceutical agents may be provided either in the MTF or through the TMOP where such facility or service is available.

(B) *Face-to-face smoking cessation counseling.* Both individual and group smoking cessation counseling are covered. The number and mix of face-to-face counseling sessions covered under this program shall be determined by the Director, TMA; however, shall not exceed the limits established in paragraph (e)(28)(iii) of this section. A TRICARE-authorized provider listed in section 199.6 of this Part must render all counseling sessions.

(C) *Toll-free quit line.* Access to a non-medical toll-free quit line 7 days a week, 24 hours a day will be available. The quit line will be staffed with smoking cessation counselors trained to assess a beneficiary's readiness to quit, identify barriers to quitting, and provide specific

suggested actions and motivational counseling to enhance the chances of a successful quit attempt. When appropriate, quit line counselors will refer beneficiaries to a TRICARE-authorized provider for medical intervention. The quit line may, at the discretion of the Director, TMA, include the opportunity for the beneficiary to request individual follow-up contact initiated by quit line personnel; however, the beneficiary is not required to participate in the quit line initiated follow-up. Printed educational materials on the effects of tobacco use will be provided to the beneficiary upon request. This benefit may be made available to overseas Prime beneficiaries should the ASD(HA) exercise his authority to do so and provide appropriate notice in the **Federal Register.**

(D) *Web-based resources.* Downloadable educational materials on the effects of tobacco use will be available through the Internet or other electronic media. This service may be made available to overseas Prime beneficiaries in all locations where Web based resources are available. There shall be no requirement to create Web based resources in any geographic area in order to make this service available.

(iii) *Limitations of smoking cessation program.* Eligible beneficiaries are entitled to two quit attempts per year (consecutive 12 month period). A third quit attempt may be covered per year with physician justification and pre-authorization. A quit attempt is defined as up to eighteen face-to-face counseling sessions over a 120 consecutive day period and/or 120 days of pharmacologic intervention for the purpose of smoking cessation. Counseling and pharmacological treatment periods that overlap by at least 60-days are considered a single quit attempt.

* * * * *

(g) *Exclusions and limitations.*

* * * * *

(39) *Counseling.* Educational, vocational, and nutritional counseling and counseling for socioeconomic purposes, stress management, and/or lifestyle modification purposes, except that the following are not excluded:

(i) Services provided by a certified marriage and family therapist, pastoral or mental health counselor in the treatment of a mental disorder as specifically provided in paragraph (c)(3)(ix) of this section and in section 199.6 of this Part.

(ii) Diabetes self-management training (DSMT) as specifically provided in paragraph (d)(3)(ix) of this section.

(iii) Smoking cessation counseling and education as specifically provided in paragraph (e)(28) of this section.

(iv) Services provided by alcoholism rehabilitation counselors only when rendered in a CHAMPUS-authorized treatment setting and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost rate.

* * * * *

(65) [Reserved]

* * * * *

3. Section 199.21 is amended by:

a. Revising paragraph (a)(2);

b. Revising paragraph (h)(2)(i);

c. Adding a new paragraph (h)(2)(iii); and

d. Adding a new (i)(2)(v)(D).

The additions and revisions read as follows:

§ 199.21 TRICARE—Pharmacy Benefits Program.

(a) *General.*

(1) * * *

(2) *Pharmacy benefits program.* (i) *Applicability.* The pharmacy benefits program, which includes the uniform formulary and its associated tiered co-payment structure, is applicable to all of the uniformed services. Geographically, except as specifically provided in paragraph (a)(2)(ii) of this section, this program is applicable to all 50 states and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. In addition, if authorized by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)), the TRICARE pharmacy benefits program may be implemented in areas outside the 50 states and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. In such case, the ASD (HA) may also authorize modifications to the pharmacy benefits program rules and procedures as may be appropriate to the area involved.

(ii) *Applicability exception.* The pharmaceutical benefit under the TRICARE smoking cessation program under section 199.4(e)(28) of this Part is available to TRICARE beneficiaries who are not entitled to Medicare benefits authorized under Title XVIII of the Social Security Act. Except as noted in section 199.4(e)(28) of this Part, the smoking cessation program, including the pharmaceutical benefit, is not applicable or available to beneficiaries who reside overseas, including the U.S. territories of Guam, Puerto Rico, and the Virgin Islands, except that under the authority of section 199.17 of this part active duty service members and active duty dependents enrolled in TRICARE Prime residing overseas, including the U.S. territories of Guam, Puerto Rico, and the Virgin Islands, shall have access to smoking cessation pharmaceuticals through either an MTF or the TMOP program where available.

* * * * *

(h) *Obtaining pharmacy services under the retail network pharmacy benefits program.*

(1) * * *

(2) *Availability of formulary pharmaceutical agents.* (i) *General.* Subject to paragraphs (h)(2)(ii) and (h)(2)(iii) of this section, formulary pharmaceutical agents are available under the Pharmacy Benefits Program from all points of service identified in paragraph (h)(1) of this section.

(ii) * * *

(iii) Pharmaceutical agents prescribed for smoking cessation are not available for coverage when obtained through a retail pharmacy. This includes network and non-network retail pharmacies.

* * * * *

(i) *Cost-sharing requirements under the pharmacy benefits program.*

(1) * * *

(2) * * *

(v) For pharmaceutical agents obtained under the TMOP program there is a:

(A) * * *

(B) * * *

(C) * * *

(D) $0.00 co-payment for smoking cessation pharmaceutical agents covered under the smoking cessation program.

* * * * *

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23764 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2011–HA–0035]

RIN 0720–AB49

TRICARE; TRICARE Sanction Authority for Third-Party Billing Agents

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The rule proposes to provide the Director, TRICARE Management Activity (TMA), or designee, with the authority to sanction third-party billing agents by invoking the administrative remedy of exclusion or suspension from the TRICARE program. Such sanctions

may be invoked in situations involving fraud or abuse on the part of third-party billing agents that prepare or submit claims presented to TRICARE for payment.

DATES: Written comments received at the address indicated below by November 21, 2011 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) number and title, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Saly, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3742.

SUPPLEMENTARY INFORMATION:

I. Background

TRICARE has regulatory authority under 32 CFR 199.9 to invoke sanctions in situations involving fraud or abuse on the part of providers of TRICARE services. A provider is defined in 32 CFR 199.2 as, ''A hospital or other institutional provider, a physician, or other individual professional provider, or other provider of services or supplies as specified in Sec 199.6 of this part.'' Third-party billing agents do not meet the definition of a provider as stated in 32 CFR 199.2, nor do TRICARE regulations currently define third-party billing agents.

Title 42 of the CFR subpart C—Exclusions at 42 CFR 402.200(b)(1) provides for the imposition of an exclusion from the Medicare and Medicaid programs (and, where applicable, other Federal health care programs) against persons that violate the provisions provided in Sec. 402.1(e) (and further described in Sec. 402.1(c)). However, TRICARE has to date established no independent regulatory authority to sanction or exclude third-party billing agents.

When TRICARE identifies submission of improper claims by a third-party billing agent not identified by the Centers for Medicare and Medicaid Services (CMS), TRICARE must refer the case to another Federal agency (Defense Criminal Investigative Service, Department of Justice, etc.) for action. In addition, CMS' authority extends only to those third-party billing agents in the United States because Medicare only covers care received in the U.S. or its territories.

II. Department of Defense Inspector General Report on TRICARE Controls Over Claims Prepared by Third-party Billing Agents

The Department of Defense, Office of Inspector General (DoD IG) initiated an audit in February 2008 to review TRICARE controls over claims submitted by third-party billing agents (Department of Defense Inspector General Report No. D–2009–037—''TRICARE Controls Over Claims Prepared by Third-Party Billing Agencies''). The DoD IG published a report on December 31, 2008. The report included a recommendation that the Director, TMA strengthen internal controls by initiating action to obtain statutory or regulatory authority to sanction billing agencies or any entities that prepare or submit improper health care claims to TRICARE contractors.

Statutory authority already exists that provides the Secretary with the authority to administer the TRICARE program to ensure quality of care for program beneficiaries, including sanctioning entities determined to be involved fraud, abuse, or conflict of interest. TRICARE already has regulatory authority to invoke sanctions on providers under 32 CFR 199.9. Based on the existing statutory authority, TMA is pursuing a regulatory change that will provide the authority to ensure both providers and third-party billing agents are held accountable for the submission of correct and proper billings. The regulatory change proposes to implement the DoD IG recommendation by adding third-party billing agents as another entity under the regulation that can be sanctioned in situations where fraud and abuse are identified on the part of third-party billing agents that prepare or submit claims presented to TRICARE for payment.

TRICARE program policy acknowledges a participating provider may arrange for a third-party to act on its behalf in the submission and the monitoring of third-party claims, including TRICARE claims. There must be an agency relationship established in which the third-party billing agent is reimbursed for the submission and monitoring of claims, but the claim remains that of the provider and the proceeds of any third-party payments, including TRICARE payments, are paid to the provider. TRICARE contractors may deal with these agents in much the same manner as they deal with the provider's accounts receivable department. This proposed rule does not intend to change the current acknowledgment of a provider's right to use a third-party billing agent as a separate billing resource.

This rule seeks to establish that such entities, when acting on behalf of a provider, are held to an equal standard in regard to accuracy and honesty when filing claims for services and supplies under the TRICARE program. As such, these entities should be subject to the same administrative controls applied to providers in ensuring that funds are disbursed appropriately. This rule will allow TRICARE to sanction third-party billing agents to prevent the payment of false or improper billings.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Section (Sec.) 801 of title 5, United States Code, and Executive Order (E.O.) 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not a significant regulatory action.

Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any Federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this proposed rule is not subject to this requirement.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601),

requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

Executive Order 13132, ''Federalism''

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this proposed rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is amended by adding to paragraph (b), to appear in alphabetical order, a definition of ''Third-party billing agent,'' to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Third-party billing agent. Any entity that acts on behalf of a provider to prepare, submit and monitor claims, excluding those entities that act solely as a collection agency.

* * * * *

3. Section 199.9 is amended by adding paragraph (n) to read as follows:

§ 199.9 Administrative Remedies for Fraud, Abuse, and Conflict of Interest.

* * * * *

(n) * * * Third-party billing agents as defined in § 199.2(b) of this part, while not considered providers, are subject to the provisions of this section to the same extent as such provisions apply to providers.

* * * * *

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23763 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2011–HA–0058; RIN 0720–AB51]

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2010; Constructive Eligibility for TRICARE Benefits of Certain Persons Otherwise Ineligible Under Retroactive Determination of Entitlement to Medicare Part A Hospital Insurance Benefits

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department is publishing this proposed rule to implement section 706 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010, Public Law 111–84. Specifically section 706 exempts TRICARE beneficiaries under the age of 65 who become disabled from the requirement to enroll in Medicare Part B for the retroactive months of entitlement to Medicare Part A in order to maintain TRICARE coverage. This statutory amendment and proposed rule only impact eligibility for the period in which the beneficiary's disability determination is pending before the Social Security Administration. Eligible beneficiaries would still be required to enroll in Medicare Part B in order to maintain their TRICARE coverage for future months, but would be considered to have coverage under the TRICARE program for the months retroactive to their entitlement to Medicare Part A. This proposed rule also amends the eligibility section of the TRICARE regulation to more clearly address reinstatement of TRICARE eligibility following a gap in coverage due to lack of enrollment in Medicare Part B.

DATES: Written comments received at the address indicated below by November 21, 2011 will be accepted.

ADDRESSES: You may submit comments, identified by docket number or Regulatory Information Number (RIN) and title, by any of the following methods:

The Web site http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Breslin, TRICARE Management Activity (TMA), TRICARE Operations Branch, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION: Prior to the enactment of section 706 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), 10 U.S.C. 1086(d) provided that a person who would otherwise receive benefits under section 1086 who is entitled to Medicare Part A hospital insurance is not eligible for TRICARE unless the individual is enrolled in Medicare Part B. When a TRICARE beneficiary becomes eligible for Medicare, Medicare becomes the primary payer and TRICARE is the secondary payer. Retroactive Medicare eligibility determinations therefore caused DoD and Medicare to reprocess claims. Section 706 of the Fiscal Year 2010 National Defense Authorization Act amended 10 U.S.C. 1086(d) to exempt TRICARE beneficiaries under the age of 65 who became Medicare eligible due to a retroactive disability determination from the requirement to enroll in Medicare Part B for the retroactive months of entitlement to Medicare Part A in order to maintain TRICARE coverage. This statutory amendment became effective upon enactment of the Fiscal Year 2010 National Defense Authorization Act on October 28, 2009. Prior to this amendment, beneficiaries who did not purchase Medicare Part B to cover the retroactive period lost their TRICARE eligibility during that period of time. As a result, beneficiaries and providers were then subject to TRICARE

recoupment action for care provided during the period of retroactive disability. Pursuant to this amendment, TRICARE remains first payer for any claims filed during the retroactive months and disabled TRICARE beneficiaries are relieved of the financial burden of making retroactive payments to avoid a gap in coverage. This proposed rule will amend the Code of Federal Regulations to conform to current statury authority regarding TRICARE eligibility.

Additionally, due to an earlier administrative omission, this proposed rule also amends 32 CFR 199.3 to more clearly address reinstatement of TRICARE eligibility following a gap in coverage due to lack of enrollment in Part B. While most TRICARE beneficiaries who become eligible for Medicare Part A maintain TRICARE coverage through prompt acceptance of Part B coverage, there are a number of beneficiaries that for one reason or another decline Part B and lose their TRICARE eligibility. For those individuals, they can have that eligibility reinstated at a later date if they re-enroll in Part B. This proposed rule amends the section on reinstatement of TRICARE eligibility to include beneficiaries who elect to enroll in Medicare Part B following a gap in TRICARE coverage.

All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''; Executive Order 13563. ''Improving Regulation and Regulatory Review''; and Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this rule is not subject to any of these requirements.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This rule will not impose additional information collection requirements on the public. OMB previously cleared the collection requirements under OMB Control Number 0704–0364.

Executive Order 13132, ''Federalism,''

We have examined the impact(s) of the rule under Executive Order 13132, and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; chapter 55 of 10 U.S.C.

2. Section 199.3 is amended by:

a. Adding paragraph (f)(2)(iii);

b. Revising paragraph (f)(3)(ix)(C); and

c. Adding paragraph (g)(3) to read as follows:

§ 199.3 Eligibility.

* * * * *

(f) * * *

(2) * * *

(iii) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii) and (f)(3)(ix) of this section.

(3) * * *

(ix) * * *

(C) The individual is enrolled in Part B of Medicare except that in the case of a retroactive determination of entitlement to Medicare Part A hospital insurance benefits for a person under 65 years of age there is no requirement to enroll in Medicare Part B from the Medicare Part A entitlement date until the issuance of such retroactive determination; and

* * * * *

(g) * * *

(3) *Enrollment in Medicare Part B.* For individuals whose CHAMPUS eligibility has terminated pursuant to paragraph (f)(2)(iii) or (f)(3)(vi) of this section due to beneficiary action to decline Part B of Medicare, CHAMPUS eligibility resumes, effective on the date Medicare Part B coverage begins, if the person subsequently enrolls in Medicare Part B and the person is otherwise still eligible.

3. Section 199.8 is amended as follows:

a. Revise paragraph (d)(1)(i);

b. Redesignate (d)(1)(vi), (d)(1)(vii) and (d)(1)(viii) as (d)(1)(vii), (d)(1)(viii), and (d)(1)(ix) respectively; and

c. Add the following new paragraph (d)(1)(vi).

§ 199.8 Double Coverage.

* * * * *

(d) * * *

(1) * * *

(i) *General rule.* In any case in which a beneficiary is eligible for both Medicare and CHAMPUS received medical or dental care for which payment may be made under Medicare and CHAMPUS, Medicare is always the primary payer except in the case of retroactive determinations of disability as provided in paragraph (d)(1)(v) of this section. For dependents of active duty members, payment will be determined in accordance to paragraph (c) of this section. For all other beneficiaries eligible for Medicare, the amount payable under CHAMPUS shall be the amount of actual out-of-pocket costs incurred by the beneficiary for that care over the sum of the amount paid for that care under Medicare and the total of all amounts paid or payable by third party payers other than Medicare.

* * * * *

(vi) *Retroactive determinations of disability.* In circumstances involving determinations of retroactive Medicare Part A entitlement for persons under 65 years of age, Medicare becomes the primary payer effective as of the date of issuance of the retroactive determination by the Social Security Administration. For care and services rendered prior to issuance of the retroactive determination, the CHAMPUS payment will be determined consistent with paragraph (d)(1)(iii)(B) of this section notwithstanding the beneficiary's retroactive entitlement for Medicare Part A during that period.

4. Section 199.11 is amended as follows:

a. Revising paragraph (f)(3) to read as follows:

§ 199.11 Overpayments Recovery.

* * * * *

(f) * * *

(3) Claims arising from erroneous TRICARE payments in situations where the beneficiary has entitlement to an insurance, medical service, health and medical plan, including any plan offered by a third party payer as defined in 10 U.S.C. 1095(h)(1) or other government program, except in the case of a plan administered under Title XIX of the Social Security Act (42 U.S.C. 1396, et seq.) through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped following the procedures in paragraph (f) of this section. If the other plan has not made payment to the beneficiary or provider, the contractor shall first attempt to recover the overpayment from the other plan through the contractor's coordination of benefits procedures. If the overpayment cannot be recovered from the other plan, or if the other plan has made payment, the overpayment will be recovered from the party that received the erroneous payment from TRICARE. Nothing in this section shall be construed to require recoupment from any sponsor, beneficiary, provider, supplier and/or the Medicare Program under Title XVIII of the Social Security Act in the event of a retroactive determination of entitlement to SSDI and Medicare Part A coverage made by the Social Security Administration as discussed in section 199.8(d) of this part.

Dated: August 24, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23765 Filed 9–19–11; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0986; FRL–9468–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Determinations of Attainment of the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC–MD–VA 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two determinations regarding the Washington, DC–MD–VA moderate 8-hour ozone nonattainment area (the Washington Area). First, EPA is proposing to make a determination that the Washington Area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. If this proposal becomes final, the requirement for this area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures related to attainment of the 1997 8-hours ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. Second, EPA is also proposing to determine that the Washington Area has attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2010. These actions are being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 20, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0986 by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2010–0986, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0986. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: For detailed information regarding this proposal, EPA prepared a Technical Support Document (TSD). The TSD can be viewed at *http://www.regulations.gov.* The following outline is provided to aid in locating information in this action.

I. What is EPA proposing?

Pursuant to sections 181(b)(2)(A) and 179(c) of the CAA, EPA is proposing to determine that the Washington Area attained the 1997 8-hour ozone NAAQS by its attainment date, June 15, 2010. This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show the area has monitored attainment of the 1997 8-hour ozone NAAQS during this monitoring period. Complete, quality assured, and certified ambient air monitoring data for the 2008–2010 monitoring period shows continued attainment.

EPA is also proposing to make a determination that the Washington Area has attained the 1997 8-hour ozone NAAQS. This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. Once this proposal is final, the requirement for this area to submit an attainment demonstration, reasonably available control measures, a reasonable further progress plan, and contingency measures related to attainment of the 1997 8-hours ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. The District of Columbia, the State of Maryland, and the Commonwealth of Virginia submitted these SIP elements for the Washington Area to EPA for review and approval in June 2007.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 parts per million (ppm). On January 6, 2010, EPA again addressed this 2008 revised standard and proposed to set the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA is working to complete reconsideration of the standard and thereafter will proceed with attainment/nonattainment area designations. This proposed rulemaking relates only to a determination of attainment for the 1997 8-hour ozone standard and is not affected by the ongoing process of reconsidering the 2008 standard. This action addresses only the 1997 8-hour ozone standard of 0.08 ppm, and does not address any subsequently revised 8-hour ozone standard.

II. What is the background for these actions?

A. The Washington Area

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Washington Area. The Washington Area includes the District of Columbia; Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia; and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland. The Washington Area was classified as a moderate nonattainment area. *See,* 40 CFR 81.309, 81.321 and 81.347. Moderate areas are required to attain the 1997 8-hour ozone NAAQS by no later than six years after designation, or June 15, 2010. *See,* 40 CFR 51.903.

B. Requirement to Determine Attainment by the Attainment Date

Under CAA sections 179(c) and 181(b)(2), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the **Federal Register**. Under CAA section 181(b)(2), which is specific to ozone nonattainment areas, if EPA determines that an area failed to attain the ozone NAAQS by its attainment date, EPA is required to reclassify that area to a higher classification.

C. Clean Data Determination

Under the provisions of EPA's ozone implementation rule (*See,* 40 CFR section 51.918), if EPA issues a determination that an area is attaining the relevant standard (through a rulemaking that includes public notice and comment), it will suspend the area's obligations to submit an attainment demonstration, RACM, RFP, contingency measures and other planning requirements related to attainment for as long as the area continues to attain. The determination of attainment is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

D. Ambient Air Quality Monitoring Data

Complete, quality assured, certified 8-hour ozone air quality monitoring data for 2007 through 2009 show that the Washington Area has attained the 1997 8-hour ozone NAAQS. The Washington Area continues to attain the 1997 8-hour ozone NAAQS considering complete, quality assured, certified 8-hour ozone air quality monitoring data for 2008 through 2010.

III. What are the effects of these actions?

If finalized, the proposed actions will not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Washington Area will remain nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

A. Proposed Determination of Attainment by the Attainment Date

EPA is proposing to determine that the Washington Area has attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. Once this determination of attainment is made final, EPA will have met its

requirement pursuant to CAA sections 181(b)(2)(A) and 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area's attainment date will be to discharge EPA's obligation under CAA sections 181(b)(2)(A) and 179, and to establish that, in accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by its applicable attainment date.

B. Clean Data Determination

EPA is proposing to determine that the Washington Area is attaining the 1997 8-hour ozone NAAQS. Once EPA finalizes this determination of attainment, the CAA requirement for the Washington Area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS would be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

The determination of attainment will:

1. Suspend the requirements to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS;

2. Continue until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS;

3. Be separate from, and not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS; and

4. Remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of any new or revised ozone NAAQS.

Although these requirements are suspended, EPA is not precluded from acting upon these elements, which were submitted to EPA in June 2007.

IV. What is EPA's analysis of the relevant air quality data?

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the complete, quality assured and certified ozone ambient air monitoring data for the monitoring periods 2007–2009 and 2008–2010 for the Washington Area, as recorded in the EPA Air Quality System (AQS) database. On the basis of that review, EPA has concluded that this area attained the 1997 8-hour ozone NAAQS based on data for the 2007–2009 ozone seasons, and continues to attain based on data for the 2008–2010 ozone seasons.

A. Data Requirements

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 parts per million (ppm) (*i.e.,* 0.084 ppm, based on the rounding convention in 40 CFR part 50, appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm at each monitoring site within the area, then the area is meeting the NAAQS.

Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in appendix I of 40 CFR part 50.

B. 2007–2009 Ozone Data

Table 1 shows the ozone design values for each monitor in the Washington Area for the years 2007–2009. All 2007–2009 design values are below 0.084 ppm, and all monitors meet the data completeness requirements. Therefore, the Washington Area has attained the 1997 8-hour ozone NAAQS, considering 2007–2009 data.

TABLE 1—2007–2009 WASHINGTON AREA 1997 8-HOUR OZONE DESIGN VALUES

State	County	Monitor ID	2007–2009 Design value (ppm)	2007–2009 Average % data completeness
Maryland	Calvert	240090011	0.074	92
	Charles	240170010	0.075	99
	Frederick	240210037	0.076	98
	Montgomery	240313001	0.078	93
	Prince George's	240330030	0.078	95
		240338003	0.078	98
Virginia	Arlington	510130020	0.079	100
	Fairfax	510590005	0.073	99
		510590018	0.080	100
		510590030	0.080	99
		510591005	0.078	93
		510595001	0.077	100
	Loudoun	511071005	0.077	99
	Prince William	511530009	0.071	98
	Alexandria City	515100009	0.075	97
District of Columbia		110010025	0.077	95
		110010041	0.078	100
		110010043	0.080	100

C. 2008–2010 Ozone Data

In 2010, four monitors in Fairfax County, Virginia were shutdown due to lack of funding. Virginia Department of Environmental Quality (VADEQ) worked with EPA prior to the Fairfax County Health Department shutting down these monitors. Because the Washington Area has more ozone monitoring sites than minimally required, and because VADEQ performed an analysis on the sites that were being shutdown showing a strong correlation between the ambient ozone data collected at the Fairfax County

ozone sites targeted for discontinuation and existing VADEQ ozone air monitoring sites currently operating in proximity to the Fairfax County area, EPA approved the shutdowns in VADEQ's 2010 Annual Network Plan. Therefore, EPA will not consider these monitors for comparison to the NAAQS with respect to 2010 data.

Table 2 summarizes the 2008–2010 design values for the Washington Area. All 2008–2010 design values are below 0.084 ppm, and all monitors meet the data completeness requirements. Therefore, 2008–2010 data indicates that the Washington Area continues to attain the 1997 8-hour ozone NAAQS.

TABLE 2–2008–2010 WASHINGTON AREA 8-HOUR OZONE DESIGN VALUES

State	County	Monitor ID	2008–2010 Design value (ppm)	2008–2010 Average % data completeness
Maryland	Calvert	240090011	0.077	93
	Charles	240170010	0.075	99
	Frederick	240210037	0.076	98
	Montgomery	240313001	0.074	93
	Prince George's	240330030	0.079	93
		240338003	0.077	99
Virginia	Arlington	510130020	0.079	95
	Fairfax	510590030	0.081	94
	Loudoun	511071005	0.075	94
	Prince William	511530009	0.070	94
	Alexandria City	515100009	0.074	91
District of Columbia		110010025	0.075	90
		110010041	0.077	94
		110010043	0.079	95

D. Conclusion

EPA's review of the complete, quality assured and certified ozone ambient air monitoring data for the monitoring periods 2007–2009 and 2008–2010 indicates that the Washington Area has met the 19978-hour ozone NAAQS. Additional information on air quality data for the Washington Area can be found in the TSD.

V. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterpartsm * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Proposed Action

Pursuant to sections 179 and 181(b)(2)(A) of the CAA, EPA is proposing to determine that the Washington Area has attained the 1997 8-hour ozone NAAQS by its moderate area attainment date, June 15, 2010. If EPA finalizes this determination, the requirements to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS will be suspended, as provided in 40 CFR section 51.918, so long as the area continues to attain the 1997 8-hour ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

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

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

In addition, these proposed determinations of attainment of the 1997 8-hour ozone NAAQS for the Washington Area do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this proposed action is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 31, 2011.

W.C. Early,

Garvin, Regional Administrator, Region III.

[FR Doc. 2011–24098 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2009–1010–201063; FRL–9467–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of the Hickory-Morganton-Lenoir 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve SIP revisions submitted on December 18, 2009, and December 22, 2010 (supplemental submission) by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), to support North Carolina's request to redesignate the Hickory-Morganton-Lenoir fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter the ''Hickory Area'' or ''Area'') to attainment for the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). The Hickory Area is comprised of Catawba County in its entirety. EPA is now proposing four separate but related actions. First, EPA is proposing to approve the December 18, 2009, $PM_{2.5}$ redesignation request, including the December 22, 2010, Motor Vehicle Emission Simulator (MOVES) mobile model supplement for the Hickory Area, provided that EPA takes final action to approve specific provisions of the North Carolina Clean Smokestacks Act (NCCSA). Second, EPA is proposing to approve North Carolina's 2008 emissions inventory for the Hickory Area under section 172(c)(3) of the Clean Air Act (CAA or Act). Third, subject to the same proviso regarding the NCCSA and final approval of the 2008 emissions inventory, EPA is proposing to approve the 1997 Annual $PM_{2.5}$ NAAQS maintenance plan for the Hickory Area, including the 2008 baseline emissions inventory, and the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) for the years 2011 and 2021, and the mobile insignificance determination for direct $PM_{2.5}$ for the Hickory Area. EPA is also describing the status of its transportation conformity adequacy determination for the new 2011 and 2021 MVEBs for NO_X that are contained in the 1997 Annual $PM_{2.5}$ NAAQS maintenance plan for the Hickory Area. Fourth and separate from the action to redesignate the Hickory Area, EPA is proposing to determine that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. These proposed actions are being taken pursuant to the CAA and its implementing regulations.

DATES: Comments must be received on or before October 20, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–1010, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2009–1010, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2009–1010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

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

SUPPLEMENTARY INFORMATION:

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I. What are the actions EPA is proposing to take?

EPA is proposing to take the following four separate but related actions, some of which involve multiple elements: (1) To redesignate the Hickory Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, provided EPA approves the emissions inventory submitted with the maintenance plan as well as the NCCSA, which is the subject of separate Federal rulemaking action; (2) to approve, under section 172(c)(3) of the CAA, the emissions inventory submitted with the maintenance plan; (3) to approve into the North Carolina SIP, under section 175A of the CAA, Hickory's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan, including the associated MVEBs (EPA is also notifying the public of the status of EPA's adequacy determination for the Hickory Area MVEBs); and (4) to determine, pursuant to section 179(c) of the CAA, that the Hickory Area attained the 1997 $PM_{2.5}$ NAAQS by its attainment date of April 5, 2010.

On January 5, 2010, at 75 FR 230, EPA determined that the Hickory Area was attaining the 1997 $PM_{2.5}$ NAAQS. EPA is now proposing to determine that the Area is continuing to attain the 1997 $PM_{2.5}$ NAAQS and to take several additional related actions regarding the Area, which are summarized below and described in greater detail throughout this notice of proposed rulemaking.

First, EPA proposes to determine that, if EPA's proposed approvals of the 2008 baseline emissions inventory for the Hickory Area and the NCCSA Federal rulemaking action are finalized, the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of Catawba County in the Hickory Area from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. The emissions inventory is being proposed for approval today, and the NCCSA rules were proposed for approval in a separate action on June 22, 2011 (76 FR 36468).

Second, EPA is proposing to approve North Carolina's 2008 emissions inventory for the Hickory Area (under CAA section 172(c)(3)). North Carolina selected 2008 as the attainment emissions inventory year for the Hickory Area. This attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual $PM_{2.5}$ NAAQS and is a current, comprehensive inventory that meets the requirements of section 172(c)(3).

Third, subject to EPA's final approval of the NCCSA into the SIP, EPA is proposing to approve North Carolina's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan for the Hickory Area as meeting the requirements of CAA section 175A (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the

Hickory Area in attainment of the 1997 Annual $PM_{2.5}$ NAAQS through 2021. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes NOx MVEBs for the years 2011 and 2021 and an insignificance determination for the mobile source contribution of direct $PM_{2.5}$ to the air quality problem in the Hickory Area. EPA is proposing to approve into the North Carolina SIP the 2011 and 2021 MVEBs that are included as part of North Carolina's maintenance plan for the 1997 Annual $PM_{2.5}$ NAAQS and the insignificance determination for the mobile source contribution of direct $PM_{2.5}$ emissions in the Area.

On a related matter to this third action, EPA is also notifying the public of the status of EPA's adequacy process (Adequacy) for the newly-established NOx MVEBs for 2011 and 2021 for the Hickory Area and the mobile source insignificance determination for direct $PM_{2.5}$ emissions. The Adequacy comment period for the Hickory Area 2011 and 2021 MVEBs began on November 23, 2010, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The Adequacy comment period for these MVEBs and the insignificance determination for direct $PM_{2.5}$ emission contribution from motor vehicles closed on December 23, 2010, and EPA received no adverse comments. Please see section VIII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs determination and the insignificance determination.

Fourth and separate from the action to redesignate the Area, EPA is proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Hickory Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

Today's notice of proposed rulemaking is in response to North Carolina's December 18, 2009, SIP submittal and subsequent supplement of December 22, 2010. Those documents address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Hickory Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS.

II. What is the background for EPA's proposed actions?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of $PM_{2.5}$ are sulfur dioxide (SO_2), NOx, ammonia and volatile organic compounds (VOCs). Unless otherwise noted by the State or EPA, ammonia and VOCs are presumed to be insignificant contributors to $PM_{2.5}$ formation, whereas SO_2 and NO_X are presumed to be significant contributors to $PM_{2.5}$ formation. Sulfates are a type of secondary particle formed from SO_2 emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NOx emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for $PM_{2.5}$. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 $\mu g/m^3$ but revised the 24-hour NAAQS to 35 $\mu g/m^3$, based again on the three-year average of the 98th percentile of 24-hour concentrations.[1] Under EPA regulations at 40 CFR part 50, the primary and secondary 1997 Annual $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area over a 3-year period.

On January 5, 2005, at 70 FR 944, and as supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Hickory Area as nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS. In that action, EPA defined the 1997 $PM_{2.5}$ Hickory Area to include Catawba County in its entirety. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard established in 2006, designating the Hickory Area as attaining this NAAQS. That action clarified that the Hickory Area was also attaining the 24-hour NAAQS promulgated in 1997. EPA did not promulgate designations for the annual average NAAQS promulgated in 2006 since the NAAQS was essentially identical to the annual $PM_{2.5}$ NAAQS promulgated in 1997. Therefore, the Hickory Area is designated nonattainment only for the annual NAAQS promulgated in 1997, and today's action only addresses this designation.

All 1997 $PM_{2.5}$ NAAQS areas were designated under subpart 1 of title I, part D, of the CAA. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007, at 72 FR 20664, EPA promulgated its $PM_{2.5}$ Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which addressed the interstate transport requirements of the CAA and required states to significantly reduce SO_2 and NOx emissions from power plants (70 FR 25162). The associated Federal Implementation Plans (FIPs) were published on April 28, 2006 (71 FR 25328). However, on July 11, 2008, the D.C. Circuit Court issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety (*North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Cir., 2008)). EPA petitioned for rehearing, and the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs (*North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir., 2008)). The Court left CAIR in place to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the Court's opinion (*id.* at 1178). The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action (*id*). As a result of these court rulings, the power plant emission reductions that resulted solely from the development, promulgation, and implementation of CAIR, and the associated contribution to air quality improvement that occurred solely as a result of CAIR in the Hickory Area could not be considered to be permanent.

On August 8, 2011, EPA published the Cross State Air Pollution Rule (CSAPR) in the **Federal Register** under the title, ''Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States'' (hereafter the ''Cross-State Air Pollution Rule'' (CSAPR)) (76 FR

[1] In response to legal challenges of the annual standard promulgated in 2006, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 Annual NAAQS would also indicate attainment of the remanded 2006 Annual NAAQS.

48208, August 8, 2011) to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. The CAIR emission reduction requirements limit emissions in North Carolina and states upwind of North Carolina through 2011 and the CSAPR requires similar or greater reductions in the relevant areas in 2012 and beyond. The emission reductions that the CSAPR mandates may be considered to be permanent and enforceable. In turn, the air quality improvement in the Hickory Area that has resulted from EGU emission reductions associated with CAIR (as well as the substantial further air quality improvement that would be expected to result from full implementation of the CSAPR) may also be considered to be permanent and enforceable. EPA proposes that the requirement in section 107(d)(3)(E)(iii) has now been met because the emission reduction requirements of CAIR address emissions through 2011 and EPA has now promulgated CSAPR which requires similar or greater reductions in the relevant areas in 2012 and beyond. Because the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA is proposing to determine that the emission reductions that led to attainment in the Hickory nonattainment area can now be considered permanent and enforceable. Therefore, EPA propose to find that the transport requirement of CAA section 107(d)(3)(E)(iii) has been met for the Hickory Area.

The 3-year ambient air quality data for 2006–2008 indicated no violations of the 1997 $PM_{2.5}$ NAAQS for the Hickory Area. As a result, on December 18, 2009, and as supplemented on December, 22, 2010, North Carolina requested redesignation of the Hickory Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the 1997 Annual $PM_{2.5}$ NAAQS for 2006–2008, indicating that the 1997 Annual $PM_{2.5}$ NAAQS had been achieved for the Hickory Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). From 2005 through the present, the monitored annual average $PM_{2.5}$ values for the Hickory Area have declined such that the Area is attaining the 1997 Annual $PM_{2.5}$ NAAQS. On January 5, 2010, EPA determined that the Hickory Area had attained the 1997 Annual $PM_{2.5}$ NAAQS (75 FR 230). While annual $PM_{2.5}$ concentrations are dependent on a variety of conditions, the overall downtrend in annual $PM_{2.5}$ concentrations in the Hickory Area can be attributed to the reduction of SO_2 emissions, as will be discussed in more detail in section VI of this proposed rulemaking. EPA is now proposing to find that the Hickory Area continues to attain the 1997 $PM_{2.5}$ NAAQS.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');

2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and

3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

IV. Why is EPA proposing these actions?

On December 18, 2009, and as supplemented on December 22, 2010, the State of North Carolina, through DAQ, requested redesignation of the Hickory Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA's evaluation indicates that the Hickory Area has attained the 1997 Annual $PM_{2.5}$ NAAQS. If EPA finalizes approval of the emissions inventory and the NCCSA rulemaking, the Area will meet the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the first three related actions previously summarized.

The fourth action, to determine that the Area has attained the 1997 Annual $PM_{2.5}$ NAAQS by its attainment date, is being proposed in accordance with section 179(c)(1) of the CAA based upon EPA's review of the data for 2007–2009. Section 179(c)(1) reads as follows: ''As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.'' EPA proposes to determine that the Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

V. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the North Carolina submittal being proposed for approval today. Approval of North Carolina's redesignation request would change the legal designation of Catawba County in North Carolina for the 1997 Annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Approval of North Carolina's request would also incorporate into the North Carolina SIP a plan for maintaining the 1997 Annual $PM_{2.5}$ NAAQS in the Hickory Area through 2021. The maintenance plan includes, among other components, contingency measures to remedy potential future violations of the 1997 Annual $PM_{2.5}$

NAAQS. Approval of North Carolina's maintenance plan would also result in approval of the NO_X MVEBs and the direct $PM_{2.5}$ mobile source insignificance determination. The maintenance plan also establishes NOx MVEBs for 2011 and 2021 for the Hickory Area of 3,996,601 kilograms per year (kg/yr) and 2,236,028 kg/yr, respectively. Final action would also approve the Area's emissions inventory under section 172(c)(3). Additionally, EPA is notifying the public of the status of its adequacy determination for the NO_X MVEBs for 2011 and 2021 and the direct $PM_{2.5}$ mobile source insignificance determination pursuant to 40 CFR 93.118(f)(1).

VI. What is EPA's analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Redesignate the Hickory Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS; (2) approve the Hickory Area emissions inventory submitted with the maintenance plan; (3) approve into the North Carolina SIP Hickory's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan, including the associated MVEBs; and (4) determine that the Hickory Area attained the 1997 $PM_{2.5}$ NAAQS by its attainment date of April 5, 2010. The first three of these actions are based upon EPA's determination that the Hickory Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Hickory Area, provided EPA approves the emissions inventory submitted with the maintenance plan and the NCCSA rulemaking. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section. The fourth action, EPA's determination that the Hickory Area attained the 1997 $PM_{2.5}$ NAAQS by its attainment date of April 5, 2010, is discussed in section XI.

Criteria (1)—The Hickory Area Has Attained the 1997 Annual $PM_{2.5}$ NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the Hickory Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. For $PM_{2.5}$, an area may be considered to be attaining the 1997 Annual $PM_{2.5}$ NAAQS if it meets the 1997 Annual $PM_{2.5}$ NAAQS, as determined in accordance with 40 CFR 50.7 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m^3 at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On January 5, 2010, at 75 FR 230, EPA determined that the Hickory Area was attaining the 1997 $PM_{2.5}$ NAAQS. EPA reviewed $PM_{2.5}$ monitoring data from monitoring sites in the Hickory Area for the 1997 Annual $PM_{2.5}$ NAAQS for the 2006–2008 and the 2007–2009 periods. These data have been quality-assured and are recorded in AQS. The annual arithmetic mean $PM_{2.5}$ concentrations for the 2006–2008, and the 2007–2009 periods, and the 3-year averages of these values (*i.e.,* design values) are summarized in Table 1.[2] EPA has reviewed more recent data which indicate that the Hickory Area continues to attain the 1997 $PM_{2.5}$ NAAQS. The design values for 2007–2009 and 2008–2010 are also included in Table 1 and demonstrate that the Hickory Area continues to meet the $PM_{2.5}$ NAAQS and that the ambient concentrations of $PM_{2.5}$ are continuing to decrease in the Area.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE HICKORY 1997 ANNUAL $PM_{2.5}$ NONATTAINMENT AREA

[µg/m^3]

County	Site name	Monitor ID	Annual average $PM_{2.5}$ concentrations (µg/m^3)				
			2006	2007	2008	2009	2010[3]
Catawba	Hickory	37–035–0004	15.18	14.62	12.75	10.32	11.23
			Three-year $PM_{2.5}$ design values (µg/m^3)				
		2006–2008	2007–2009		2008–2010		
Catawba	Hickory	37–035–0004	14.2		12.6		11.4

The 3-year design value (2006–2008) submitted by North Carolina for redesignation of the Hickory Area is 14.2 µg/m^3, which meets the NAAQS as described above. Preliminary 2010 air quality data that are available in AQS, but not yet certified, indicate that the Area continues to attain the $PM_{2.5}$ NAAQS. As mentioned above, on January 5, 2010 (75 FR 230) EPA published a clean data determination for the Hickory Area for the 1997 $PM_{2.5}$ NAAQS. In today's action, EPA is proposing to determine that the Area is continuing to attain the 1997 $PM_{2.5}$ NAAQS. EPA will not go forward with the redesignation if the Area does not continue to attain until the time that EPA finalizes the redesignation. As discussed in more detail below, the State of North Carolina has committed to continue monitoring in the Area in accordance with 40 CFR part 58.

[2] The values in Table 1 represent the most current quality assured, quality controlled and certified ambient air monitoring data available in the EPA AQS database and therefore differ slightly from the values submitted in the North Carolina redesignation request.

[3] The preliminary $PM_{2.5}$ ambient air quality data for 2010 for the Hickory Area indicates that the Area is attaining the NAAQS with 2008–2010 design values. This preliminary data includes complete data from all quarters of 2010 but has not yet been certified and is thus subject to change.

Criteria (5)—North Carolina Has met all Applicable Requirements Under Section 110 and Part D of Title I of the CAA; and Criteria (2)—North Carolina Has a Fully Approved SIP Under Section 110(k) for the Hickory Area

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that North Carolina has met all applicable SIP requirements for the Hickory Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. EPA also proposes to find that the North Carolina SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 1997 Annual $PM_{2.5}$ nonattainment areas). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable under section 110(k). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under the CAA. For the purposes of review of the State's redesignation request, the SIP needs only to be fully approved with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. Hickory Area Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants (*e.g.,* NO_X SIP Call,[4] CAIR,[5] and the CSAPR). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

EPA has not yet completed rulemaking on a submittal from North Carolina dated April 1, 2008, addressing ''infrastructure SIP'' elements required under CAA section 110(a)(2). However, these are statewide requirements that are not a consequence of the nonattainment status of the Hickory Area. As stated above, EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. Therefore, notwithstanding the fact that EPA has not yet completed rulemaking on North Carolina's submittal for the $PM_{2.5}$ infrastructure SIP elements of section 110(a)(2), EPA believes it has approved all SIP elements under section 110 that must be approved as a prerequisite for redesignating the Hickory Area to attainment.

Title I, Part D requirements. EPA proposes that with approval of North Carolina's base year emissions inventory, which is part of the maintenance plan submittal, the North Carolina SIP will meet applicable SIP requirements under part D of title I of the CAA. As discussed in greater detail below, EPA believes the emissions inventory is approvable because the 2008 direct $PM_{2.5}$, SO_2, and NO_X emissions for North Carolina were developed consistent with EPA guidance for emissions inventories and represent a comprehensive, accurate and current inventory as required by section 172(c)(3).

Part D, subpart 1 applicable SIP requirements. EPA has determined that

[4] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP Call, North Carolina developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. On December 27, 2002, EPA approved North Carolina's rules as fulfilling Phase I (67 FR 78987).

[5] On May 12, 2005 (70 FR 25162), EPA promulgated CAIR which required 28 upwind States and the District of Columbia to revise their SIPs to include control measures that would reduce emissions of SO_2 and NO_X. Various aspects of CAIR rule were petitioned in court and on December 23, 2008, the U.S. Court of Appeals for the District of Columbia Circuit remanded CAIR to EPA (*see North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008)) which left CAIR in place to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the Court's ruling. The Court directed EPA to remedy various areas of the rule that were petitioned consistent with its July 11, 2008 (*see North Carolina* v. *EPA, 531 F.3d 83*6 (D.C. Cir., July 11, 2008)), opinion, but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR is currently in effect in North Carolina.

if the approval of the base year emissions inventories, discussed in section IX of this rulemaking, is finalized, the North Carolina SIP will meet the applicable SIP requirements for the Hickory Area for purposes of redesignation under title I, part D of the CAA. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS were designated under this subpart of the CAA, and the requirements applicable to them are contained in sections 172 and 176.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992).

Subpart 1 Section 172 Requirements. Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's January 5, 2010, determination that the Hickory Area was attaining the $PM_{2.5}$ standard suspended North Carolina's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended North Carolina's obligation to submit an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), reasonable available control measures, and contingency measures under section 172(c)(9).

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

Because attainment has been reached in the Hickory Area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain the standard until redesignation. *See* also 40 CFR 51.1004(c).

The RFP plan requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because EPA has determined that the Hickory Area has monitored attainment of the 1997 Annual $PM_{2.5}$ NAAQS. *See* General Preamble, 57 FR 13564. *See also* 40 CFR 51.1004 (c). In addition, because the Hickory Area has attained the 1997 Annual $PM_{2.5}$ NAAQS and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As part of North Carolina's redesignation request for the Hickory Area, North Carolina submitted a 2008 base year emissions inventory. As discussed below in section IX, EPA is proposing to approve the 2008 base year inventory submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' North Carolina has demonstrated that the Hickory Area will be able to maintain the NAAQS without part D NSR in effect and therefore North Carolina need not have fully approved part D NSR programs prior to approval of the redesignation request. Nonetheless, North Carolina currently has a fully-approved part D NSR program in place. North Carolina's PSD program will become effective in the Hickory Area upon redesignation to attainment. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the North Carolina SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[6] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)(upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995, Tampa, Florida). Thus, the Hickory Area has satisfied all applicable requirements for purposes of redesignation under

[6] CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

section 110 and part D of title I of the CAA.

b. The Hickory Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the applicable North Carolina SIP for the Hickory Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation for the 1997 Annual $PM_{2.5}$ NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, North Carolina has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1997 Annual $PM_{2.5}$ NAAQS SIP elements applicable in the Hickory Area (April 17, 1980, 45 FR 26038; August 27, 1981, 46 FR 43137; October 11, 1985, 50 FR 41501; November 19, 1986, 51 FR 41786; and December 19, 1986, 51 FR 45468).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. In addition, EPA believes that since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they are also not applicable requirements for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all Part D subpart 1 requirements applicable for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement in the Hickory Area 1997 Annual $PM_{2.5}$ NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA believes North Carolina has demonstrated that the observed air quality improvement in the Hickory Area is due to permanent and enforceable reductions resulting from implementation of the SIP, Federal measures, and other state adopted measures.

Fine particulate matter, or $PM_{2.5}$, refers to airborne particles less than or equal to 2.5 micrometers in diameter. Although treated as a single pollutant, fine particles come from many different sources and are composed of many different compounds. One of the largest components of $PM_{2.5}$ in the southeastern United States is sulfate, which is formed through various chemical reactions from the precursor SO_2. The other major component of $PM_{2.5}$ is organic carbon, which originates predominantly from biogenic emission sources. Nitrate, which is formed from the precursor NO_X, is also a component of $PM_{2.5}$. Crustal materials from windblown dust and elemental carbon from combustion sources are less significant contributors to total $PM_{2.5}$.

State and Federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions.

The Federal measures that have been implemented include:

Tier 2 vehicle standards. In addition to requiring NO_X controls, the Tier 2 rule reduced the allowable sulfur content of gasoline to 30 parts per million (ppm) starting in January of 2006. Most gasoline sold in North Carolina prior to this had a sulfur content of approximately 300 ppm.

Heavy-duty gasoline and diesel highway vehicle standards. The second phase of the standards and testing procedures, which began in 2007, reduces particulate matter (PM) and NO_X from heavy-duty highway engines and also reduces highway diesel fuel sulfur content to 15 ppm. The total program is expected to achieve a 90 and 95 percent reduction in PM and NO_X emissions from heavy-duty highway engines, respectively.

Nonroad spark-ignition engines and recreational engines standards. Tier 1 of this standard, implemented in 2004, and Tier 2, implemented in 2007, have reduced and will continue to reduce PM emissions.

Large nonroad diesel engine standards. Promulgated in 2004, this rule is being phased in between 2008 and 2014. This rule will reduce sulfur content in nonroad diesel fuel and, when fully implemented, will reduce NO_X and direct $PM_{2.5}$ emissions by over 90 percent from these engines.

CAIR and the Cross-State Air Pollution Rule (CSAPR). As previously discussed, the remanded CAIR, originally promulgated to reduce transported pollution, was left in place to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaced it with a rule consistent with the Court's opinion. To remedy CAIR's flaws, EPA promulgated the final CSAPR on August 8, 2011. CSAPR addresses the interstate transport requirements of the CAA with respect to the 1997 ozone, 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS. As noted previously, the requirements of CAIR address emissions thru the 2011 control period and CSAPR requires similar or greater emission reductions in the relevant areas in 2012 and beyond.

The state measures that have been implemented to date and relied upon by North Carolina to demonstrate attainment and/or maintenance include:

NCCSA. The primary state-adopted measure is the NCCSA, enacted in June 2002. The NCCSA includes a schedule of system-wide caps on emissions of NO_X and SO_2, the first of which became effective in 2007, and has no provision for the trading of pollution credits from one utility to another. According to North Carolina, this rule requires coal-fired power plants in the State to reduce annual NO_X emissions from 245,000 tons in 1998 to 56,000 tons by 2009 (a 77 percent reduction) and to reduce annual SO_2 emissions from 489,000 tons in 1998 to 250,000 tons by 2009 (a 49 percent reduction), and further SO_2 reductions to 130,000 tons in 2013 (a 73 percent reduction). Although there are no power plants located within the Hickory Area, there are power plants located around the Area. On August 21, 2009, North Carolina submitted a SIP revision to incorporate specific provisions of the NCCSA into the Federally approved SIP. On June 22, 2011, EPA proposed approval of the NCCSA rules as a revision to the SIP and expects to take final action on it in a rulemaking separate from today's proposed action but prior to any final action on this redesignation.

Another significant rulemaking which has led to permanent and enforceable reductions is the NO_X SIP Call rule. This rule was predicted to reduce

summertime NO_X emissions from power plants and other industries by over 60 percent in North Carolina by 2006. *See* Table III–5 of NO_X SIP Call, 63 FR 57356, 57434 (October 27, 1998). These emission reductions are state and Federally enforceable.

Table 2 presents the annual emissions from North Carolina sources as recorded in EPA's acid rain database. Since 2002, when the NO_X controls started coming on-line to meet the NO_X SIP Call, and later to meet the NCCSA, the annual NO_X emissions from subject sources have decreased dramatically from 145,706 tons per year (tpy) in 2002 to 61,669 tpy in 2008. In 2009 the emissions decreased to 44,506 tpy—down more than 69 percent from 2002. Between 2005 and 2008, the annual SO_2 emissions from the utilities in North Carolina decreased by more than half from 500,936 tpy to 227,030 tpy, or nearly 274,000 tons reduced. In 2009 the emissions were again halved, down 76 percent from 2002. The decline in SO_2 emissions has coincided with a decline in annual $PM_{2.5}$ concentrations across North Carolina.

TABLE 2—ANNUAL EMISSIONS FROM ALL NC SOURCES IN THE EPA CLEAN AIR MARKETS DATABASE

Year	Annual SO_2 emissions (tons)	Annual NO_X emissions (tons)
2002	462,993	145,706
2003	462,041	135,879
2004	472,320	124,079
2005	500,936	114,300
2006	462,143	108,584
2007	370,827	64,770
2008	227,030	61,669
2009	110,948	44,506

Other state measures have been implemented that are state enforceable but not a part of the Federally-enforceable SIP. Such measures contribute to reductions in pollutant emissions, although to a lesser extent than the ones identified above, and include the following:

Clean Air Bill. This state legislation expanded the inspection and maintenance program from 9 counties to 48 counties and was phased in for the Hickory Area from July 1, 2002, through July 1, 2003. This program reduces NO_X, VOC, and carbon monoxide (CO) emissions.

Open burning. This regulation, originally approved in 1997, prohibits the burning of man-made materials throughout the State. Additionally, this regulation prohibits open burning of yard waste in areas for which the DAQ forecasts an air quality action day. The open burning regulation will reduce $PM_{2.5}$ emissions, as well as NO_X, VOC and CO emissions.

Diesel Retrofits. As part of the North Carolina Mobile Source Emission Reduction Grants program, a number of cities, counties and school districts have installed diesel oxidation catalysts or diesel particulate filters on their diesel equipment. The vehicles that have been retrofitted include school buses and county fleet trucks used for solid waste pickup. These types of filters are designed to reduce PM engine emissions, and when used with ultra low sulfur diesel fuel, NO_X and VOC emissions are also reduced. Even though these emission reductions are voluntary and not enforceable, they are still considered permanent reductions.

Diesel Emissions Reduction Act (DERA). DERA provides new diesel emissions reduction grant authority for EPA. This funding is used to achieve significant reductions in diesel emissions that improve air quality and protect public health. The DERA funds that the DAQ has received have been used to retrofit, repower, or replace existing diesel engines from on-road and nonroad mobile source vehicles and equipment. This program will reduce PM, NO_X, and VOC emissions. Even though these emission reductions are voluntary, they are still considered permanent reductions once a retrofit is completed. To date, North Carolina has retrofitted over 6,000 diesel school buses. In addition to impacting local emissions in the nonattainment area, most of these measures impact emissions statewide.

EPA agrees with North Carolina's assessment that, although $PM_{2.5}$ and $PM_{2.5}$ precursor reductions within the nonattainment area have contributed to improved air quality, the majority of the improvement in ambient $PM_{2.5}$ concentrations has resulted from reductions in SO_2 emissions from in-state coal-fired power plants due to the NCCSA. The annual emissions from these facilities have significantly decreased since 2005, with over 250,000 tons of SO_2 emission reductions in 2008 compared to 2005. EPA's analysis of emissions data available in from the Clean Air Markets Division Web site (*http://www.epa.gov/airmarkets/*) shows that the statewide reductions in SO_2 emissions are much greater than any decreases in emissions that can be attributed to decreases in demand associated with reductions in operating hours or heat inputs at North Carolina power plants. While coal-fired electric power generation in North Carolina decreased 4.8 percent from 2005 to 2008,[7] SO_2 emissions from coal-fired electric power plants declined 46.0 percent during the same period.

The NCCSA reductions took place beginning in 2006, the first year of the 3-year attainment period submitted by North Carolina for redesignation of the Hickory Area. Since the final compliance date for the NCCSA SO_2 emissions caps is 2013, future design values are expected to continue to decline below the 2006–2008 attaining design values. The significant statewide reductions in utility SO_2 emissions will be permanent and enforceable upon EPA's approval of the NCCSA rules into the North Carolina SIP. Further, EPA does not have any information to suggest that the decrease in ambient $PM_{2.5}$ concentrations in the Hickory Area is due to unusually favorable meteorological conditions. Additionally, the emission reductions resulting from the NCCSA discussed above are of a greater magnitude than any influence that could be expected from meteorology. The 250,000 tons of SO_2 emission reductions since 2005 represents a greater than 41 percent reduction of statewide SO_2 emissions. It is reasonable to expect that such significant reductions have reduced ambient $PM_{2.5}$ levels throughout the State—including in the Hickory Area. Indeed, every $PM_{2.5}$ monitor in the State

[7] Electric Power Annual 2009, DOE/EIA–0348(2009), North Carolina Electricity Profile, Tables 5 and 7. April 2011.

has shown a consistent downward trend during the period from 2006–2009.[8]

Criteria (4)—The Hickory Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Hickory Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, DAQ submitted a SIP revision to provide for the maintenance of the 1997 Annual $PM_{2.5}$ NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 1997 Annual $PM_{2.5}$ violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA finds that North Carolina's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the North Carolina SIP, provided that EPA takes final action to approve the NCCSA rules.

b. Attainment Emissions Inventory

The Hickory Area first attained the 1997 Annual $PM_{2.5}$ NAAQS based on monitoring data for the 3-year period 2006–2008. North Carolina selected 2008 as the attainment emissions inventory year in part because it was already in the process of developing some emissions inventory data for this year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual $PM_{2.5}$ NAAQS. North Carolina began development of the attainment inventory by first generating a baseline emissions inventory for the Hickory Area. As noted above, the year 2008 was chosen as the base year for developing a comprehensive emissions inventory for primary $PM_{2.5}$, SO_2, and NO_X, for which projected emissions could be developed for 2011, 2014, 2017, and 2021. In addition to comparing the final year of the plan, 2021, to the base year, 2008, North Carolina compared interim years to the 2008 baseline to demonstrate that these years are also expected to show continued maintenance of the annual $PM_{2.5}$ standard.

The emissions inventories are composed of four major types of sources: point, area, on-road mobile, and non-road mobile. The future year emissions inventories have been estimated using projected rates of growth in population, traffic, economic activity, expected control programs, and other parameters. Non-road mobile emissions estimates were based on the EPA's NONROAD2008, a non-road mobile model, with the exception of railroad locomotive and aircraft engine emissions. The railroad locomotive and aircraft engine emissions were estimated by taking activity data, such as landings and takeoffs, and multiplying by an emission factor. On-road mobile source emissions were calculated using EPA's MOVES mobile emission factors model. The 2008 SO_2, NO_X and $PM_{2.5}$ emissions for the Hickory Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 3 and 4 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The December 18, 2009, final submittal and December 22, 2010, supplement included a maintenance plan for the Hickory Area. This demonstration:

(i) Shows compliance with and maintenance of the annual $PM_{2.5}$ standard by providing information to support the demonstration that current and future emissions of SO_2, NOx and $PM_{2.5}$ remain at or below 2008 SO_2, NO_X, and $PM_{2.5}$ emissions levels.

(ii) Uses 2008 as the attainment year and includes future emission inventory projections for 2011, 2014, 2017, and 2021, as shown in Tables 3 and 4 below.

(iii) Identifies an ''out year'' at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO_X MVEBs were established for the last year (2021) of the maintenance plan.[9] Additionally, North Carolina chose, through interagency consultation, to establish NO_X MVEBs for 2011 (see section VII below).

(iv) Provides, as shown in Table 4 below, the actual and projected emissions inventories, in tpy, for the Hickory Area.

TABLE 3—ACTUAL AND PROJECTED NO_X, SO_2, AND $PM_{2.5}$ EMISSIONS FROM ALL SOURCE CATEGORIES FOR CATAWBA COUNTY IN THE HICKORY AREA (TPY)

	2008	2011	2014	2017	2021
NO_X					
Point	13310	10549	10548	10548	10548
Area	662	614	566	520	454
On-road Mobile	4982	4005	3240	2591	2054
Non-road Mobile	1173	922	700	551	453
Total	20127	16090	15054	14210	13509
SO_2					

[8] *http://www.epa.gov/airtrends/values.html.*

[9] $PM_{2.5}$ MVEBs are not required for the Hickory Area due to the insignificance determination for the motor vehicle $PM_{2.5}$ contribution.

TABLE 3—ACTUAL AND PROJECTED NO_X, SO_2, AND $PM_{2.5}$ EMISSIONS FROM ALL SOURCE CATEGORIES FOR CATAWBA COUNTY IN THE HICKORY AREA (TPY)—Continued

	2008	2011	2014	2017	2021
Point	6189	6187	6186	6184	6183
Area	2263	2037	1808	1580	1277
On-road Mobile	35	20	18	19	20
Non-road Mobile	18	6	4	3	4
Total	8505	8250	8016	7786	7484
$PM_{2.5}$					
Point	6976	6975	6975	6973	6971
Area	682	658	629	606	559
On-road Mobile	166	127	107	89	73
Non-road Mobile	70	67	57	46	38
Total	7894	7827	7768	7714	7641

TABLE 4—EMISSIONS AND MAINTENANCE SUMMARY FOR THE HICKORY $PM_{2.5}$ NONATTAINMENT AREA

Year	NO_X (tpy)	SO_2 (tpy)	$PM_{2.5}$ (tpy)
2008	20,127	8,505	7,894
2011	16,090	8,250	7,827
2014	15,054	8,016	7,768
2017	14,210	7,786	7,714
2021	13,509	7,484	7,641
Difference from 2008 to 2021	−6,618	−1,021	−253

Tables 3 and 4 summarize the 2008 and future projected emissions of direct $PM_{2.5}$ and precursors from the counties in the Hickory Area. In situations where local emissions are the primary contributor to nonattainment, the ambient air quality standard should not be violated in the future as long as emissions from within the nonattainment area remain at or below the baseline with which attainment was achieved. In the Hickory Area, however, the preponderance of the nonattainment problem is due to SO_2 emissions from power plants outside the nonattainment area, but within North Carolina. As shown by the speciation data in the State's submittal,[10] sulfates are one of the largest contributors to ambient $PM_{2.5}$ in the Hickory Area and in the State as a whole, contributing about 30 percent of the total $PM_{2.5}$ mass. Sulfates are formed through various SO_2 reactions in the atmosphere. According to EPA's National Emissions Inventory for 2005 and Clean Air Markets Division acid rain database, over 90 percent of SO_2 emissions in North Carolina were from stationary point sources, greater than 80 percent of which were from power plants reporting to the acid rain program.[11] Organic carbon, which also contributes about 30 percent of the total $PM_{2.5}$ mass in the Hickory Area, is predominately attributed to biogenic emission sources. The next largest contributor in the Hickory Area is an ''other'' group that is attributed to water, sea salts, and other trace materials and which accounts for about 17 percent of the mass.

Because the most significant sources contributing to ambient $PM_{2.5}$ levels in the Hickory Area are utilities located outside the nonattainment area, but within North Carolina, reductions in emissions from these point sources provide the greatest potential for reductions in ambient $PM_{2.5}$ concentrations. For this reason, the State presented information in its submittal (as discussed above in the section on permanent and enforceable reductions) showing that the NCCSA requires these sources to reduce their emissions by substantial amounts that are more than sufficient for the Hickory Area to demonstrate attainment and maintenance of the $PM_{2.5}$ NAAQS at issue here. EPA has proposed rulemaking action to approve specific provisions of the NCCSA into the North Carolina SIP, and final approval would assure that power plants within North Carolina will remain sufficiently regulated to provide for continued maintenance as required by CAA section 175A.

With regard to emissions generated outside North Carolina which have the potential to impact the Hickory Area, EPA notes several recent emissions reductions that have occurred or will occur in nearby states. First, On April 14, 2011, EPA announced a settlement with the Tennessee Valley Authority (TVA) to resolve alleged Clean Air Act violations at 11 of its coal-fired plants in Alabama, Kentucky, and Tennessee.[12] The settlement will require TVA to invest a TVA estimated $3 billion to $5 billion on new and upgraded state-of-the-art pollution controls. When fully implemented, the pollution controls and other required actions will address 92 percent of TVA's coal-fired power plant capacity, reducing emissions of NO_X by 69 percent and SO_2 by 67 percent from TVA's 2008 emission levels. The settlement will also significantly reduce particulate matter and carbon dioxide (CO_2) emissions. The consent decree also requires that operation of 18 coal-fired units at the Johnsonville, John Sevier, and Widows Creek plants be phased out by 2017.

Second, the State of Georgia has recently passed a multi-pollutant rule to reduce NO_X and SO_2 emissions from

[10] SIP submittal figures 2–2 and 4–1.

[11] EPA's National Emissions Inventory data is available on the Web site: *http://www.epa.gov/ttn/chief/eiinformation.html.* The acid rain database can be accessed on EPA's Clean Air Markets Division Web site: *http://www.epa.gov/airmarkets/*.

[12] *Alabama, et al.* v. *TVA,* No. 3:11–CV–00170, (E.D. TN 2011) (Consent Decree), available at *http://www.epa.gov/compliance/resources/decrees/civil/caa/tvacoal-fired-cd.pdf.*

many of its coal-fired EGUs.[13] Third, the consent decrees for Dominion Power [14] and American Electric Power (AEP) [15] in the Commonwealth of Virginia require further controls of NO_X and SO_2 emissions at those power plants. On April 21, 2003, the Department of Justice and EPA announced a settlement against Virginia Electric and Power Company (VEPCO a subsidiary of Dominion Resources, Inc.). This settlement requires VEPCO, one of the nation's largest coal-fired electric utilities, to install new pollution control equipment and to upgrade existing controls on several units in its system, thus resulting in substantial air pollution reductions. The settlement covers eight VEPCO plants, six in Virginia and two in West Virginia, comprising twenty electricity-generating units. These eight plants emitted over 350,000 tons of SO_2 and NO_X in 2000. The settlement will reduce these emissions to approximately 86,500 tpy SO_2 and 26,000 tpy NO_X. On October 9, 2007, the United States, along with eight individual states and thirteen citizen groups, announced a settlement agreement with AEP that that mandates emissions reductions at sixteen of AEP's coal-fired power plants (46 units) located in Indiana, Kentucky, Ohio, Virginia, and West Virginia. NO_X emissions from subject plants will be reduced by greater than 68 percent by 2016 as compared to 2006 levels. Likewise, by 2018 SO_2 emissions will decrease by greater than 78 percent as compared to 2006 levels.

Finally, EPA has recently finalized the CSAPR to regulate interstate transport of power plant emissions. EPA's modeling for the final rule indicates that the Hickory Area would maintain the NAAQS into the future in the absence of the rule. The 2012 base case run, which simulates air quality without CAIR and without a transport rule, assumes a 4 million ton increase in SO_2 regionally. A 2014 base case run also assumes no CAIR, but does include additional enforceable controls that are required to occur between 2012 and 2014. Based on these modeling assessments, $PM_{2.5}$ concentrations in the Hickory Area are still projected to decrease to 12.9 $\mu g/m^3$ in 2012 and 12.1 $\mu g/m^3$ in 2014. Though not necessary for demonstrating attainment and maintenance in the Hickory Area, the final CSAPR will result in additional reductions of NO_X and SO_2 emissions that cross state lines. EPA estimates that by 2014, power plants in the covered states will reduce annual emissions of SO_2 by about 2.2 million tons beyond what would have been achieved at that time under CAIR. By 2014, we estimate that NO_X emissions in covered states will be about 500,000 tons lower than emissions would have been under CAIR.

Based on the analysis described above, EPA has concluded that impacts on air quality from emissions transported across state lines have been adequately addressed for the Hickory Area and that the Hickory Area will maintain the annual $PM_{2.5}$ standard through 2021. Furthermore, the final CSAPR mandates even greater reductions than have already occurred and, more importantly, any reductions in $PM_{2.5}$ in the Hickory Area from the final CSAPR will be in excess of those needed to maintain the Annual $PM_{2.5}$ NAAQS.

A maintenance plan requires the state to show that projected future year emissions will not exceed the level of emissions which led the Area to attain the NAAQS. North Carolina has projected emissions as described previously and determined that emissions in the Hickory Area will remain below those in the attainment year inventory until 2021.

As discussed further in section VII of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the Area met the NAAQS. North Carolina has decided to allocate a portion of the available safety margin to the Area's NO_X MVEBs for 2011 and 2021 for the Hickory Area and has calculated the safety margin in its submittal. Specifically, a total of 363,327 kg/year [16] (400 tpy) and 372,671 kg/year (411 tpy) of the available NO_X safety margins are allocated to the 2011 and 2021 MVEB, respectively. The remaining safety margins for NO_X are 3,637 tpy and 6,207 tpy for 2011 and 2021, respectively. This allocation and the resulting available safety margin for the Hickory Area are discussed further in section VII of this proposed rulemaking.

d. Monitoring Network

There are currently three monitors measuring $PM_{2.5}$ in the Hickory Area. The State of North Carolina, through DAQ, has committed to continue operation of the monitors in the Hickory Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved North Carolina's 2010 monitoring plan on September 22, 2010.

e. Verification of Continued Attainment

The State of North Carolina, through DAQ, has the legal authority to enforce and implement the requirements of the Hickory Area 1997 Annual $PM_{2.5}$ Maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future $PM_{2.5}$ attainment problems.

DAQ will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Hickory Area using the latest emissions factors, models and methodologies. For these periodic inventories, DAQ will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, the DAQ will re-project emissions for the Hickory Area.

f. Contingency Measures in the Maintenance Plan

The contingency measures are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

[13] Georgia Rule 391–3–1–.02(2)(uuu), ''SO_2 Emissions from Electric Utility Steam Generating Units,'' was first adopted by the Georgia Board of Natural Resources January 28, 2009, with an amendment adopted June 24, 2009.

[14] *U.S. et al.* v. *Va. Elec. & Power Co.,* No. 1:03–cv–00517–LMB (E.D. Va. 2003) (Consent Decree), available at *http://www.epa.gov/compliance/resources/decrees/civil/caa/vepcocd.pdf.*

[15] *U.S. et al.* v. *American Elec. Power Serv. Corp.,* No C2–99–1250 (E.D. Ohio 2007) (Consent Decree), available at *http://www.epa.gov/compliance/resources/decrees/civil/caa/americanelectricpower-cd.pdf.*

[16] Conversion factor from grams to tons = 907185 grams per ton.

In the December 18, 2009, submittal, North Carolina affirms that all programs instituted by the State and EPA for PM control will remain enforceable and that sources are prohibited from reducing emissions controls following the redesignation of the Area. The contingency plan included in the December 18, 2009, submittal includes a 3-step triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The secondary and tertiary triggers are pre-violation triggers and thus activation does not necessarily mean a violation of the actual annual $PM_{2.5}$ NAAQS has occurred or will occur. The pre-violation triggers allow the State to begin evaluating the causes of increased ambient $PM_{2.5}$ concentrations and take corrective action to prevent a future violation. In the contingency plan, North Carolina has committed to taking action on the activation of a primary or secondary trigger. These triggers and the actions resulting from them are discussed more fully below.

The primary trigger will occur when the certified 3-year average of the average annual ambient concentration is greater than 15.0 $\mu g/m^3$ at any monitor in the maintenance area. The resulting trigger date will be 60 days after the date that the State observes an annual average concentration that, when averaged with the previous two annual average $PM_{2.5}$ concentrations, would result in a 3-year design value greater than 15.0 $\mu g/m^3$. North Carolina has identified a secondary warning trigger to occur when the State finds that the rolling twelve-quarter average monitored $PM_{2.5}$ levels exceed the $PM_{2.5}$ NAAQS in the Hickory Area (non-calendar year basis). The trigger date will be 60 days from the date that the State observes that the rolling 12-quarter average is greater than 15.0 $\mu g/m^3$. A tertiary (third type of) trigger will be activated when a monitor in the Hickory Area has an annual average greater than 15.0 $\mu g/m^3$. In addition to the triggers indicated above, North Carolina will track regional emissions submitted annually for large sources or every three years for other sources through the Consolidated Emissions Reporting Rule and Air Emissions Reporting Rule and compare them to the projected inventories and attainment year inventory. North Carolina commits to review theses emissions inventories and evaluate assumptions made to project emissions in the maintenance plan to determine if unexpected growth in NO_X, SO_2 or $PM_{2.5}$ in the Area will jeopardize maintenance of the 1997 Annual $PM_{2.5}$ NAAQS.

Once a primary or secondary trigger is activated, DAQ will commence analysis, including trajectory analysis, and emissions inventory assessment to determine emission control measures that will be required to attain or maintain the 1997 Annual $PM_{2.5}$ NAAQS. $PM_{2.5}$ speciation data from the speciation trends network monitors will also be reviewed to help determine which control measures would be most effective. If it is determined that the violation or exceedance of the $PM_{2.5}$ NAAQS is due to sources outside of North Carolina, then DAQ will consult with EPA on its findings and determinations on what contingency measures will be implemented to reduce emissions. If EPA and DAQ agree that the violation or exceedance was due to sources outside of North Carolina, DAQ will consult with regulatory authorities from contributing up-wind sources to determine additional actions to be implemented.[17]

If DAQ determines that a violation or exceedance occurred due to sources within North Carolina, then by November 1 of the year following the year which caused the primary or secondary trigger activation, the State will complete sufficient analysis to begin adoption of necessary rules for ensuring attainment and maintenance of the annual $PM_{2.5}$ NAAQS. If the rules are still needed, they would become State effective within 7 months after the November 1 analysis (by the following July 1), unless legislative review is required. Each adopted rule will include a schedule that will require compliance with the rule no later than 2 years after adoption of the rule.

At least one of the following contingency measures will be adopted and implemented upon a primary or secondary triggering event:

- Continued implementation of previously adopted controls (NCCSA and diesel retrofits) which have not yet been realized but are sufficient to address the violation (and in excess of emissions reductions considered for maintenance);
- Reasonably Available Control Technology on stationary sources in the Hickory Area;
- Diesel inspection and maintenance program;[18]
- Implementation of diesel retrofit programs, including incentives for performing retrofits;
- Additional controls in upwind areas within North Carolina.

When a tertiary trigger is activated, DAQ will commence analyses including meteorological evaluation, trajectory analyses, and emissions inventory assessment to understand why an annual exceedance of the standard has occurred. DAQ will work with the local air awareness program and develop an outreach plan to identify any additional voluntary measures that can be implemented and implement the plan during the following summer.

As designed, a tertiary trigger will always occur before a primary trigger because it is based on an annual average, whereas the primary trigger is based on an average of three consecutive annual averages. This means DAQ will commence analyzing the cause of higher ambient $PM_{2.5}$ levels in the Area well before an actual NAAQS violation occurs. Further, a secondary trigger is likely to occur before a primary trigger because it is determined at the end of each calendar quarter based on a rolling 12-quarter average. This means that if the Area were to experience a NAAQS violation, DAQ will have likely already commenced the process for adoption of control measures as described above. EPA is now making the preliminary determination that the contingency measures outlined above in North Carolina's contingency plan are adequate and ensure that the State will promptly correct any future violation of the 1997 Annual $PM_{2.5}$ NAAQS in the Hickory Area.

EPA has concluded that the Hickory Area maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Provided that EPA takes final rulemaking to approve the NCCSA, the maintenance plan SIP revision submitted by the State of North

[17] In a letter dated May 20, 2011, North Carolina provided additional clarification on the timing and content of their contingency plan. In the letter, North Carolina clarified that it is there intent to take corrective measures to address a violation of the 1997 Annual $PM_{2.5}$ NAAQS within 18–24 months of the violation. This letter is available in the docket EPA–R04–OAR–2009–1011 on the *http://www.regulations.gov* Web site.

[18] At this time, there is not an approved method for determining emission reductions from a Diesel Inspection and Maintenance program. Therefore, there is no technical basis to award emission credits for a heavy duty diesel inspection and maintenance program in the SIP. However, we do not want to preclude future technical changes that may make awarding such emission credits possible. If it is necessary to implement contingency measures for this area, North Carolina, in coordination with EPA, will evaluate the feasibility of this program as a contingency measure at that time. If a technical basis for emission credits is not available, other contingency measures will need to be implemented.

Carolina for the Hickory Area meets the requirements of section 175A of the CAA and is approvable.

VII. What Is EPA's Analysis of North Carolina's Proposed Direct $PM_{2.5}$ Insignificance Determination and the Proposed NO_X MVEBs for the Hickory Area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

Today's actions address two related elements regarding on-road motor vehicle emissions and the requirement to establish MVEBs. First, EPA is proposing to find that the direct $PM_{2.5}$ emission contribution from motor vehicles to $PM_{2.5}$ pollution in the Hickory Area is insignificant. The result of this determination, if finalized, is that North Carolina will not need to develop an MVEB for direct $PM_{2.5}$ for the Hickory Area and the MPO will not need to perform a regional emissions analysis for direct $PM_{2.5}$ when it demonstrates conformity. See below for further information on the insignificance determination. Second, EPA is proposing to approve the NO_X MVEBs for the Hickory Area.

Direct $PM_{2.5}$ insignificance. For motor vehicle emissions budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). In certain instances, the Transportation Conformity Rule allows areas to forgo establishment of an MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. The general criteria for insignificance determinations can be found in 40 CFR 93.109(m). Insignificance determinations are based on a number of factors, including (1) The percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for the providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004.[19] Specifically, the rationale is explained on page 40061 under the subsection entitled ''XXIII. B. Areas With Insignificant Motor Vehicle Emissions.'' Any insignificance determination under review of EPA is subject to the adequacy and approval process for EPA's action on the SIP.

Through the adequacy and SIP approval process, EPA may find that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for the pollutant or precursor at issue. In the case of the Hickory Area, EPA made its insignificance determination for directly emitted $PM_{2.5}$ as part of the adequacy process on May 2, 2011 (76 FR 24475). As a result of EPA's insignificance determination, the Hickory Area was no longer required to perform regional emissions analyses for directly emitted $PM_{2.5}$ as part of future $PM_{2.5}$ conformity determinations for the 1997 Annual $PM_{2.5}$ NAAQS until such time that EPA reviewed and took action on Hickory redesignation request for the 1997 Annual $PM_{2.5}$ NAAQS (the subject of this proposed action). Upon the effective date of EPA's adequacy determination, Federal regulations no longer require a regional emissions analysis (for the purpose of transportation conformity implementation) for the relevant pollutant or precursor. Areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant conformity requirements. Additionally, such areas are required to satisfy the regional emissions analysis requirements for pollutants or precursors for which EPA has not made a determination of insignificance.

The maintenance plan for the Hickory Area, included as part of the SIP revision, contains MVEBs for NO_x and an insignificance determination for the direct $PM_{2.5}$ contribution of motor vehicles to the air quality problem in the Hickory Area. As part of the preparation for its redesignation request, North Carolina consulted with the interagency consultation group for the Hickory Area regarding the direct $PM_{2.5}$ insignificance determination. For the purposes of regional emissions analysis, the information provided by North Carolina supports EPA's proposal to determine that the $PM_{2.5}$ contribution from motor vehicles to $PM_{2.5}$ pollution in the Hickory Area is insignificant. The information provided by North Carolina to EPA, as part of the SIP revision, addresses each of the factors listed in 40 CFR 93.109(m) and is summarized below. The 2009 on-road $PM_{2.5}$ emissions account for less than two percent of the total direct $PM_{2.5}$ from all sources in the Hickory Area SIP inventory. In addition, direct $PM_{2.5}$ emissions from on-road mobile sources decreased by 25 percent from 2002–2009 (100 tpy to 75 tpy) while vehicle miles traveled (VMT) increased 14 percent during the same time frame. As shown in Table 3 above, North Carolina's maintenance plan demonstrates that on-road $PM_{2.5}$ emissions will continue to decrease through 2021, the end of the maintenance plan for the Hickory Area. In addition, since 2006, the $PM_{2.5}$

[19] In the July 1, 2004, final rule, provisions for insignificance determinations were outlined in 40 CFR 93.109(k). EPA revised 40 CFR 93.109 in its March 24, 2010 final rule (75 FR 14260) and the provisions for insignificance determinations are now located at 40 CFR 93.109(m).

annual average concentration has decreased by 32 percent such that the Area is now attaining the Annual $PM_{2.5}$ NAAQS with a 2007–2009 design value of 12.6 μg/m³, well below the standard of 15.0 μg/m³. According to information provided by North Carolina, point sources contributed nearly 97 percent of the emissions in future years in the Hickory Area. Support for these percentages is found in Figure 4.5.2–3, located in the supplemental Appendix C.3—Mobile Source Inventory Documentation North Carolina's submittal (available in the Docket for this proposed rulemaking). In addition, North Carolina conducted a sensitivity analysis that doubled the $PM_{2.5}$ emissions from on-road mobile sources in 2008 which indicated a negligible difference (0.04 μg/m³) in the $PM_{2.5}$ modeling design value in Catawba County. As a result, the information provided by North Carolina indicates that the direct $PM_{2.5}$ contribution from on-road mobile sources to $PM_{2.5}$ pollution is insignificant for the Hickory Area.

With regard to the factor relating to the absence of motor vehicle control measures in the SIP, EPA considered the existence of a vehicle inspection and maintenance program in the North Carolina SIP and its implementation in Catawba County comprising the Hickory Area. The program, which was added to the North Carolina SIP to control precursors of ozone rather than as a $PM_{2.5}$ control measure, is currently being implemented in the Hickory Area.

After evaluating the information provided by North Carolina and weighing the factors for the insignificance determination outlined in 40 CFR 93.109(m), EPA is now proposing to approve North Carolina's determination that the direct $PM_{2.5}$ contribution from motor vehicle emissions to the $PM_{2.5}$ pollution problem in the Hickory Area is insignificant. EPA's insignificance finding should be considered and specifically noted in the transportation conformity documentation that is prepared for the Area.

After interagency consultation with the transportation partners for the Hickory Area, North Carolina has developed MVEBs for NO_X for the entire Area. North Carolina developed these MVEBs, as required, for the last year of its maintenance plan—2021. Additionally, the State of North Carolina has elected to develop MVEBs for the year 2011. The MVEBs reflect the total on-road emissions for 2011 and 2021, plus a safety margin that is based on an allocation from the available NO_X safety margin. Under 40 CFR 93.101, the safety margin is the difference between the emissions level needed for attainment (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector, however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were calculated to account for uncertainties in population growth, changes in modeled vehicle miles traveled and new emission factor models. The NO_X MVEBs for the Hickory Area are defined in Table 5 below.

TABLE 5—HICKORY AREA NO_X MVEBS

[kg/year]

	2011	2021
On-Road Mobile Emissions	3,633,274	1,863,357
Safety Margin Allocated to MVEB	363,327	372,671
NO_X Conformity MVEB	3,996,601	2,236,028

As mentioned above, the Hickory Area has chosen to allocate a portion of the available safety margin to the NO_X MVEBs for the years 2011 and 2021. A total of 363,327 kg/year (400 tpy) and 372,671 kg/year (411 tpy) of the available NO_X safety margins are allocated to the 2011 and 2021 MVEB, respectively. Thus, the remaining safety margins in 2011 and 2021 are 4,524 tpy and 7,093 tpy, respectively.

Through this rulemaking, EPA is proposing to approve the MVEBs for NO_X for 2011 and 2021, including the allocation from the NO_X safety margins, for the Hickory Area because EPA has made the preliminary determination that the Area maintains the 1997 Annual $PM_{2.5}$ NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Hickory Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations and the MPOs must use the MOVES model in future $PM_{2.5}$ conformity determinations for their long-range transportation plans and transportation improvement programs. After thorough review, EPA has determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is proposing to approve the budgets because they are consistent with maintenance of the Annual $PM_{2.5}$ NAAQS through 2021.

VIII. What is the status of EPA's adequacy determination for the proposed NO_X MVEBs for 2011 and 2021 and for the direct $PM_{2.5}$ insignificance determination for the Hickory Area?

When reviewing a submitted ''control strategy'' SIP or maintenance plan containing an MVEB, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy

process for transportation conformity purposes is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, North Carolina's maintenance plan submission includes NO_X MVEBs for the Hickory Area for the years 2011 and 2021. EPA reviewed the NO_X MVEBs through the adequacy process. The North Carolina SIP submission, including the Hickory Area NO_X MVEBs, was open for public comment on EPA's adequacy Web site on November 23, 2010, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on adequacy NO_X MVEBs for 2011 and 2021 for Hickory Area closed on December 23, 2010. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

In a letter sent on February 3, 2011, EPA notified North Carolina DAQ that the MOVES based 2011 and 2021 MVEBs for the Hickory Area were determined to be adequate for transportation conformity purposes. On May 2, 2011, EPA published its adequacy notice in the **Federal Register** (76 FR 24475). When EPA finds the 2011 and 2021 MVEBs adequate or approves them, the new MVEBs for NO_X must be used for future transportation conformity determinations. For required regional emissions analysis years prior to 2011, the applicable budgets are the 2009 MVEBs and direct $PM_{2.5}$ insignificance determination from the attainment demonstration, which have already been found adequate through another action. (75 FR 9204 and 75 FR 26751). For required regional emissions analysis years that involve 2011–2020, the applicable budgets will be the new 2011 MVEBs. For required regional emissions analysis years that involve 2021 or beyond, the applicable budgets will be the new 2021 MVEBs. The 2011 and 2021 MVEBs are defined in section VII of this proposed rulemaking.

IX. What is EPA's analysis of the proposed 2008 base year emissions inventory for the Hickory Area?

As discussed in section VI above, section 172(c)(3) of the CAA requires areas to submit a comprehensive, accurate and current emissions inventory. As part of North Carolina's request to redesignate the Hickory Area, the State submitted a 2008 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data. On December 22, 2010, DAQ provided EPA with a supplemental SIP revision to update the on-road mobile emissions by replacing the on-road mobile emissions that were prepared with MOBILE6.2 with on-road emissions that were prepared using the new MOVES emissions model. North Carolina's submittal documents 2008 emissions in the Hickory Area in units of tpy. Table 6 below provides a summary of the 2008 emissions of direct $PM_{2.5}$, NO_X, and SO_2 for the Hickory Area. For emissions in other years, refer to Tables 3 and 4.

TABLE 6—HICKORY AREA 2008 EMISSIONS FOR $PM_{2.5}$, NO_X, AND SO_2

[tpy (percent total)]

Source	$PM_{2.5}$	NO_X	SO_2
Point Source Total	6,976 [88.4]	13,310 [66.1]	6,189 [72.8]
Area Source Total	682 [8.6]	662 [3.3]	2,263 [26.6]
On-Road Mobile Source Total	166 [2.1]	4,982 [24.8]	35 [0.4]
Non-Road Mobile Source Total	70 [0.9]	1,173 [5.8]	18 [0.2]
Total for all Sources	7,894	20,127	8,505

In today's notice, EPA is proposing to approve this 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

X. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revision Including Approval of the NO_X MVEBs for 2011 and 2021 and the Direct $PM_{2.5}$ Insignificance Determination for the Hickory Area

EPA previously determined that the Hickory Area was attaining the 1997 $PM_{2.5}$ NAAQS on January 5, 2010, at 75 FR 230. EPA is now taking four separate but related actions regarding the Area's redesignation and maintenance of the 1997 Annual $PM_{2.5}$ NAAQS. Three of the actions are discussed in this section and the fourth is discussed in the next section.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2007–2009 monitoring period, and after review of preliminary data in AQS for 2008–2010, that the Hickory Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. Provided that EPA takes final action to approve the NCSSA and, under section 172(c)(3), the 2008 base emissions inventory, EPA is proposing to determine that the Hickory Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. On this basis, EPA is proposing to approve North Carolina's redesignation request for the Hickory Area.

Second, EPA is proposing to approve North Carolina's 2008 emissions inventory for the Hickory Area (under section CAA 172(c)(3)). North Carolina selected 2008 as the attainment emissions inventory year for the Hickory Area. This attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual $PM_{2.5}$ NAAQS and also is a current, comprehensive inventory that meets the requirements of section 172(c)(3).

Third, subject to final approval of the NCCSA rules, EPA is proposing to approve North Carolina's submitted maintenance plan for the Hickory Area, including the NO_X MVEBs for 2011 and 2021 and the insignificance determination for the direct $PM_{2.5}$ contribution of motor vehicles to $PM_{2.5}$ pollution, as meeting the requirements of section 175A of the CAA. The maintenance plan demonstrates that the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for the NO_X

MVEBs for 2011 and 2021 and the mobile source direct $PM_{2.5}$ insignificance determination for the $PM_{2.5}$ NAAQS in accordance with 40 CFR 93.118(f)(1). On May 2, 2011, EPA published its adequacy notice in the **Federal Register** (76 FR 24472). Within 24 months from the effective date of EPA's adequacy determination, the transportation partners will need to demonstrate conformity to the new NO_X MVEBs pursuant to 40 CFR 93.104(e) and will need to document the mobile source direct $PM_{2.5}$ insignificance determination for the $PM_{2.5}$ NAAQS in future conformity determinations (76 FR 24475).

If finalized, approval of the redesignation request would change the official designation of Catawba County in the Hickory Area for the 1997 Annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. EPA is also proposing to approve into the North Carolina SIP the maintenance plan for the Hickory Area, the emissions inventory submitted with the maintenance plan, and the 2011 and 2021 MVEBs. EPA is proposing to take these actions if and when EPA finalizes, after notice and comment rulemaking, its approval of the NCSSA rules as a revision to the North Carolina SIP.

XI. Proposed Action on the Determination That the Hickory Area Has Attained the 1997 $PM_{2.5}$ NAAQS by Its Applicable Attainment Date

The fourth action EPA is proposing today is to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Hickory Area attained the 1997 Annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. This determination is being proposed in accordance with section 179(c)(1) of the CAA and EPA regulations.

XII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

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

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: September 9, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–24103 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 28

[Docket No. USCG–2011–0887]

RIN 1625–AB61

Waiver of Citizenship Requirements for Crewmembers on Commercial Fishing Vessels; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the Regulatory Identification Number (RIN) to a proposed rule published in the **Federal Register** on August 18, 2011, entitled ''Waiver of Citizenship Requirements for Crewmembers on Commercial Fishing Vessels.'' This correction provides correct information with regard to the RIN.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. David Belliveau, Office of Vessel Activities (CG–5433), Coast Guard; telephone 202–372–1247, e-mail *David.J.Belliveau@uscg.mil.*

Correction

In the **Federal Register** of August 18, 2011, in FR Vol. 76, No. 160, on page 51317, in the first column, correct the RIN to read: RIN 1625–AB61.

Dated: September 14, 2011.

Kathryn G. Sinniger,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2011–24055 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 540

[Docket No. 11–16]

RIN 3072–AC45

Passenger Vessel Operator Financial Responsibility Requirements for Nonperformance of Transportation

September 13, 2011.

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules regarding the establishment of passenger vessel financial responsibility for nonperformance of transportation. Currently the amount of coverage required for performance shall not exceed $15 million. The amendments would modify the current cap on required performance coverage from $15 million to $30 million over a two year period; adjust the amount of coverage required for smaller passenger vessel operators by providing for consideration of alternative forms of protection; revise the application form; add an expiration date to the Certificate (Performance); and make some technical adjustments to the regulations. Comments and suggestions are particularly sought regarding consideration of duplicative forms of protection without creating gaps that could leave consumers vulnerable.

DATES: Submit comments on or before November 21, 2011.

ADDRESSES: Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

Phone: (202) 523–5725.

E-mail: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Certification and Licensing, 800 North Capitol Street, NW., Washington, DC 20573–0001.

Phone: (202) 523–5787.

E-mail: bcl@fmc.gov.

SUPPLEMENTARY INFORMATION:

Submit Comments: For non-confidential comments, submit an original and five (5) copies, and if possible, send a PDF of the document by e-mail to *secretary@fmc.gov.* Include in the subject line: Docket No. 11–16 Comments on PVO Financial Responsibility. Confidential filings must be submitted in the traditional manner on paper, rather than by e-mail. Comments submitted that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as ''confidential'' and describe the nature and extent of the confidential treatment requested. When submitting comments in response to the NPRM that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as ''Confidential-Restricted,'' with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, ''confidential materials excluded.'' The Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality. Questions regarding filing or treatment of confidential responses to this NPRM should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or e-mail provided above.

Section 3 of Public Law 89–777 (Section 3),[1] 46 U.S.C. 44101–44106, requires passenger vessel operators to establish financial responsibility to indemnify passengers for nonperformance of transportation.

On December 3, 2009, the Commission issued a Notice of Inquiry (NOI) [2] to solicit information and comments on whether the passenger vessel financial responsibility regulations in 46 CFR Part 540, Subpart A, should be amended. The NOI focused on three subjects: (1) The Cost of Complying with Nonperformance Regulations; (2) Adequacy of Nonperformance Coverage; and (3) Practices of Sureties, Credit Card Companies and Others. On March 3, 2010, the Commission held a public hearing to receive further information regarding passenger vessel operators' financial responsibility.[3]

A number of comments received in response to the NOI contend that the $15 million cap disproportionately affects small U.S.-flagged PVOs and gives preferential treatment to larger PVOs who are only required to cover a small percentage of unearned passenger revenue (UPR) versus the 110% of coverage required for small PVOs with UPR below the $15 million cap. Several PVOs suggested that the Commission examine the financial health of a PVO to assess its risk of nonperformance and adjust the required coverage accordingly. Several respondents requested that the Commission consider travel insurance and protection for credit card payments to offset the required financial coverage for nonperformance. The Commission now proposes to amend its current rules.

Background

The $15 million cap currently set forth at 46 CFR 540.9(j) has been in place since 1991, when it was raised from $10 million.[4] In 1994, the Commission proposed to remove the $15 million cap. Following receipt of comments opposing this proposal, the Commission revised its proposal by proposing a sliding scale requirement that would increase the amount of coverage required for those PVOs exceeding $15 million in UPR, without requiring coverage of the total amount of UPR.[5] The Commission later discontinued Docket No. 94–06 without making any revisions to its regulations.[6]

Since the cap was raised in 1991, UPR of many cruise lines has increased substantially. Since September 2000, fifteen PVOs that had been covered by the Commission's regulations have ceased operations: Premier Cruise Operations Ltd. (Premier), New Commodore Cruise Lines Limited (New Commodore), Cape Canaveral Cruise Lines, Inc., MP Ferrymar, Inc., American Classic Voyages Company (American Classic), Royal Olympic, Regal Cruises, Ocean Club Cruise Line, Society Expeditions, Scotia Prince, Glacier Bay, Great American Rivers,

[1] Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without their first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] Federal Maritime Commission, Notice of Inquiry Regarding Passenger Vessel Responsibility, 74 FR 65125 (December 9, 2009).

[3] Federal Maritime Commission, Notice of Public Hearing, Passenger Vessel Financial Responsibility, 75 FR 7599 (February 22, 2010).

[4] See Docket No. 90–01, Security for the Protection of the Public, Maximum Required Performance Amount, 55 FR 34563 (August 23, 1990).

[5] See Docket No. 94–06, Financial Responsibility Requirements for Nonperformance of Transportation, 59 FR 15149, March 31, 1994.

[6] Docket No. 94–06, Financial Responsibility Requirements for Nonperformance of Transportation, 67 FR 19535 (April 22, 2002).

RiverBarge Excursion Lines, Inc., Majestic America Line, and West Travel, Inc. d/b/a Cruise West.

Of those, three had UPR in excess of the present $15 million cap at the time their operations ceased: Premier, New Commodore, and American Classic. Premier and New Commodore passengers were reimbursed through a combination of credit card refunds and surety bond payments. Without credit card reimbursement, the surety bonds in place at the time would have covered roughly two-thirds of outstanding UPR. The third line, American Classic had the highest UPR at $51 million. It is estimated that approximately 60% of its passengers were reimbursed through credit card issuers and travel insurance. After ten years of bankruptcy proceedings, the remaining 40% of passengers who had paid by cash or check finally received some reimbursement, up to $2,100 each. American Classic fares for their standard-length cruises were up to $3,435 per person, and were required to be paid sixty days in advance.[7]

Level of Unearned Passenger Revenue

There has been no increase in the coverage cap level since the present cap was established in 1991. The amount of coverage required of a PVO is 110% of its highest UPR earned within the most current two year period, up to the cap. In 1990, total two year high UPR for all PVOs regulated by the Commission exceeded $1 billion. Total financial coverage provided at that time was slightly more than $250 million. Thus, approximately 25% of outstanding UPR was protected by financial instruments filed with the Commission in 1990. Since then, total two-year high UPR for all PVOs in the Commission's program has more than tripled to $3.7 billion, while total financial coverage for all such PVOs under the Commission's program has increased to only $308 million, providing coverage for approximately 8% of the total UPR now in the hands of PVOs.

The Commission is required to ensure adequate financial responsibility to reimburse passengers in the event of nonperformance. The concern is the availability of funds to reimburse passengers for nonperformance of cruises, as the amount of passenger funds collected by PVOs well before scheduled voyages continues to increase. Moreover, as the size of vessels deployed by these PVOs increases, failure to perform a single voyage could have a significantly bigger impact.

[7] See American Classic Voyage Co. Prospectus Statement at S–31. S–33 (Feb. 16, 2000).

While the risk of some cruise lines' failing may be low, the potential losses could be high, the risk of which is determined by the premiums charged to PVOs by their sureties. The more financially viable a given PVO, the less an issuer of bonds or guaranties would presumably charge for providing coverage. This concept is reflected in the responses to the Commission's NOI last year, which indicated that the largest PVO incurs premiums substantially less than other lines. Moreover, as with insurance policies, coverage may be available only when the client is of sound health. Premiums can increase exponentially with increased risk, to the point where coverage is no longer available for clients that are not financially or operationally sound. Once there appears to be significant risk of failure, the ability to increase coverage becomes problematic as increased coverage may not be available, or may be so costly as to tip the PVO over the financial brink and create the very nonperformance the Commission seeks to prevent.

The $15 Million Cap

The Commission has examined its current $15 million cap in light of the above circumstances. Since 1967, when the cap was set at $5 million, the Consumer Price Index has increased more than five-fold. Simply keeping pace with that index would require a cap of over $25 million if adjusted from the last increase in 1990 or to approximately $33 million if adjusted from 1967 (In 1967, 100% of all UPR was covered). Yet the cruise industry itself and the amount of UPR outstanding at any one time have increased to a much greater degree. A coverage requirement capped at $25 million (much less $15 million) would be far less than 100% coverage for cruise lines whose fleets consistently have outstanding UPR in the hundreds of millions of dollars.

Finally, recent experience has demonstrated that increased coverage requirements should be put in place *before* a PVO begins to experience financial difficulty. It appears that once a PVO becomes financially unstable, any Commission action requiring a certificant to increase its coverage may not be possible.

For these reasons, therefore, the Commission now proposes to increase the cap on required evidence of financial responsibility in 46 CFR 540.9(j) from $15 million to $30 million. In order to allow the industry time to adjust, the proposed rule includes a phase-in period of two years for the adjustment. By the end of the first year, the limit will adjust to $22 million, and by the end of the second year it will adjust to $30 million. Every two years after the limit on required financial responsibility reaches $30 million, the limit shall automatically adjust to the nearest $1 million based on changes as reflected in the Consumer Price Index.

Prior to any change in the amount of financial responsibility, the proposed rule would require that notice be provided. This notice will be published on the Commission's Web site and in the **Federal Register**, affording PVOs time to post the correct amount of financial responsibility.

In recognition of the disparity between small and large cruise lines in the percentage of unearned passenger revenue for which evidence of financial responsibility is required, the proposed rule also includes a provision whereby the Commission may, on a case by case basis, recognize additional protections submitted by an applicant in consideration of a reduction in the amount required to be furnished. This proposal would provide that PVOs with UPR not exceeding 150% of the cap may request relief from coverage requirements otherwise provided for in these rules by substituting alternative forms of protection. The PVO would submit its request to BCL, which would coordinate with the applicant, evaluate the request, and submit the request with its analysis for Commission consideration. The Commission invites comments on how this regulatory relief proposal could be improved to most effectively avoid duplicative coverage without creating gaps that leave cruise passengers vulnerable.

The Commission also invites comments on other proposals that will ensure adequate financial responsibility of cruise vessels in the event of nonperformance, such as modeling nonperformance financial responsibility requirements on current financial requirements for casualty administered by the Commission by: (1) Calculating the revenue generated by the top two rate tiers of berths on a first-class or premium voyage for an appropriate number (for example the five largest vessels) of each PVO's fleets; and (2) applying appropriate discount factors to prevent coverage that exceeds UPR.

The proposed rule also includes updates and improvements to the Commission's existing financial responsibility rules and forms.

The $30 Million Cap

Each time the Section 3 cap has been increased by the Commission, the pressure inflation places on passenger tickets was raised as a primary

concern.[8] In Docket No. 90–01, when the present Section 3 coverage cap was set at $15 million, the Commission stated that the increase was ''predicated, for the most part, upon the increase in the consumer price index.'' [9] The Bureau of Labor Statistics' Consumer Price Index for all Urban Consumers (CPI–U) is the most widely used measure to track changes in prices by federal agencies and financial institutions.

It is common practice for federal agencies to adjust user fees, fines and penalties using an inflation calculator on two or four year cycles.[10] The proposed automatic adjustment based on the widely published and freely accessible CPI–U would provide PVOs with certainty as to their ongoing responsibilities to comply with the regulations. The proposed rule would thereafter automatically adjust the $30 million cap every two years based on changes in prices as measured by the CPI–U to the nearest $1 million.

Technical Changes

A number of other revisions are also proposed. These changes would better refine the rules, based on the Commission's recent experience. For example, Section 540.4(b) and Section 540.23(a) would be modified to direct applicants to file application form FMC–131 with the Bureau of Certification and Licensing instead of with the Office of the Secretary. The current regulations in 46 CFR part 540 contain a sample Form FMC–131 (Application for Passenger Vessel Certificate) as well as a sample surety bond, guaranty, and escrow agreement. As proposed, Form FMC–131 would no longer be included within the regulations, but would be available from the Bureau of Certification and Licensing and the Commission's Web site. The sample escrow agreement would also be revised. The Commission also proposes to revise the application form to more closely comport with the information needed in an application and ultimately allow for the form to be completed electronically. Although the current rules require the submission of an application form, the current version for many years has not been useful to either the applicants or staff reviewing the filing, and rarely is completed. The new form will be streamlined and include a section that captures vessel information. Additionally, the Commission proposes a 5-year expiration period for each Certificate (Performance) issued. This proposed change would harmonize the Commission's PVO certificates with international certificates, such as those issued under The Safety of Life at Sea Convention and the International Convention on Load Lines, as well as with domestic certificates such as the U.S. Coast Guard's Certificate of Inspection.[11] An expiration date would also provide clarity to U.S. Customs and Border Protection in determining the validity of a certificate, and would ensure that the Commission periodically confirms PVO information previously submitted to the Commission. Further, the proposed rule would also provide that the Commission, for good cause, could issue a certificate with an expiration date less than 5 years, which would provide for issuance of short-term certificates to PVOs that operate from U.S. ports for a short period.

Voluntary Resolution of Passenger Claims in the Event of Nonperformance

Though not part of this rulemaking, we desire to call the attention of the public to the services provided by the Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS), which provides a number of services designed to assist passengers with difficulties in dealing with cruise operators through its Ombudsman Service. The CADRS staff is trained to serve as third-party neutrals in a facilitative manner.

Regulatory Impact

In 2003, the Commission adopted a presumption that PVOs generally are not small businesses under the Small Business Regulatory Enforcement Fairness Act amendments to the Regulatory Flexibility Act because they are generally large companies with more than 500 employees, the measure used by the North American Industrial Classification System published by the Office of Management and Budget.[12]

Therefore, no small entities will be affected by the proposed rule.

Any potential impact from the proposed rule would be relatively small. While the rule as proposed would require some PVOs to furnish an increased amount of proof of financial responsibility, the estimated cost of that increase is not significant. Additionally, Section 540.9(j)(ii) of the proposed rule would enable those PVOs with UPR not exceeding 150% of the coverage cap to request that the Commission consider alternative forms of financial protection.

The proposed rule would increase total net financial protections for cruise passengers by approximately $144 million while likely providing approximately $37 million in reduced bond requirements for smaller PVOs. Surety companies have informed the Commission that bond premiums typically range from 0.5% to 3% of a bond's face value, depending on a company's financial health, which results in a total net increase in premium costs of between $685,000 and $4.1 million. This includes a likely reduction in premium costs of between $186,000 and $1.1 million for small PVOs.

Accordingly, the Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Members of the public may comment on this certification.

This rule is not a ''major rule'' under 5 U.S.C. 804(2).

The collection of information requirements contained in this proposed 46 CFR Part 540 have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, e-mail: *OMD@fmc.gov*, or fax: (202) 523–3646; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 17th Street and Pennsylvania Avenue, NW., Washington, DC 20503, e-mail: *OIRASubmission@OMB.EOP.GOV,* or fax: (202) 395–5806.

[8] See Docket No. 79–93, Final Rule, 45 FR 23428 (April 7, 1980), and Docket No. 90–01, Final Rule, 55 FR 34564 (August 23, 1990).

[9] Docket No. 90–01, Final Rule, 55 FR 34564, 34566 (August 23, 1990).

[10] See 35 CFR 138.240 (procedure for calculating limit of liability adjustments for inflation).

[11] On October 31, 1988, the International Maritime Organization (IMO) convened the International Conference on the Harmonized Systems of Survey and Certification to adopt the Protocol of 1988 relating to the International Convention for Safety of Life at Sea (SOLAS), 1974, and the Protocol of 1988 relating to the International Convention on Load Lines, 1966. By adopting these 1988 Protocols, IMO standardized the term of validity for certificates and intervals for vessel inspections required by the Conventions. These 1988 Protocols entered into force as international law on February 3, 2000. See also 65 FR 6494 (February 9, 2000).

[12] See FMC Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings (February 7, 2003).

List of Subjects

46 CFR Part 501

Administrative practice and procedure, Authority delegations, Organization and functions, Seals and insignia.

46 CFR Part 540

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend 46 CFR parts 501 and 540 as follows.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. Revise the authority citation for Part 501 to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. 301–307, 40101–41309, 42101–42109, 44101–44106; Pub. L. 89–56, 70 Stat. 195; 5 CFR Part 2638; Pub. L. 104–320, 110 Stat. 3870.

2. Revise § 501.5(g)(2) to read as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(g) * * *

(2) Through the Office of Passenger Vessels and Information Processing, has responsibility for reviewing applications for certificates of financial responsibility with respect to passenger vessels, reviewing requests for substitution of alternative forms of financial protection, managing all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and for developing and maintaining all Bureau database and records of OTI applicants and licensees.

* * * * *

§ 501.26 [Amended]

3. In § 501.26, amend the introductory text by removing the word ''redelgated'' and adding the word ''redelegated'' in its place.

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

4. The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; 46 U.S.C. 305, 44101–44106.

§ 540.1 [Amended]

5. In § 540.1(b), add the phrase ''by the Department of Homeland Security'' after the phrase ''clearance''.

6. Amend § 540.2 by revising paragraphs (a) and (i) to read as follows:

§ 540.2 Definitions.

* * * * *

(a) *Person* includes individuals, limited liability companies, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

* * * * *

(i) *Unearned passenger revenue* means that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed; this may include port fees and taxes, but excludes such items as airfare, hotel accommodations, and tour excursions.

* * * * *

7. Revise § 540.4 to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Public Law 89–777 (46 U.S.C. 44101–44102, 44104–44106) enacted November 6, 1966, there must be filed with the Federal Maritime Commission an application on Form FMC–131 for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation. Copies of Form FMC–131 may be obtained from the Commission's Web site at *http://www.fmc.gov,* or from the Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.

(b) An application for a Certificate (Performance) shall be filed with the Bureau of Certification and Licensing, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith except that any person other than the owner or charterer who arranges, offers, advertises, or provides passage on a vessel may apply for a Certificate (Performance). Late filing of the application will be permitted without penalty only for good cause shown.

(c) All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency.

(d) The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart.

(e) An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $2,767. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $1,382. Administrative changes, such as the renaming of a vessel will not incur any additional fees.

(f) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority.

(g) In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than fifteen (15) days following such change. For the purpose of this subpart, a material change shall be one which: (1) results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility.

(h) Notice of the application for issuance, denial, revocation, suspension, or modification of any such Certificate will be published on the Commission's Web site at *http://www.fmc.gov.*

8. Amend § 540.5 as follows:

a. Revise paragraph (a)(1)(i) to read as follows; and

b. Amend paragraph (c) by adding a sentence at the end of the paragraph to read as follows.

§ 540.5 Insurance, guaranties, and escrow accounts.

* * * * *

(a) * * *

(1) * * * (i) Until notice in writing has been given to the assured or to the insurer and to the Bureau of Certification and Licensing at its office in Washington, DC 20573, by certified mail or courier service, and

* * * * *

(c) * * * Copies of Form FMC–133A may be obtained from the Commission's Web site at *http://www.fmc.gov* or from the Bureau of Certification and Licensing.

* * * * *

9. Amend § 540.6(a) by adding a sentence at the end of the paragraph to read as follows:

§ 540.6 Surety bonds.

(a) * * * Copies of Form FMC–132A may be obtained from the Commission's Web site at *http://www.fmc.gov* or from the Bureau of Certification and Licensing.

* * * * *

10. Revise § 540.7 to read as follows:

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established:

(a) A Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation.

(b) The period covered by the Certificate (Performance) shall be five (5) years, unless another termination date has been specified thereon.

11. Amend § 540.8 by revising paragraphs (a) and (b)(3) to read as follows:

§ 540.8 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall notify the applicant of its intention to deny, revoke, suspend, or modify and shall include with the notice the reason(s) for such action. If the applicant, within 20 days after the receipt of such notice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission. Regardless of a hearing, a Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, guaranty, or escrow account.

(b) * * *

(3) Failure to comply with or respond to lawful inquiries, requests for information, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

* * * * *

12. Amend § 540.9 by revising paragraphs (c), (e), (h), (j), and (k) to read as follows:

§ 540.9 Miscellaneous.

* * * * *

(c) The Commission's bond (Form FMC–132A), guaranty (Form FMC–133A), and application (Form FMC–131) forms may be obtained from the Commission's Web site at *http://www.fmc.gov* or from the Bureau of Certification and Licensing at its office in Washington, DC 20573.

* * * * *

(e) Each applicant, insurer, escrow agent and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee and filed with the Commission. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the certificant, insurer, escrow agent, or guarantor, as the case may be, by certified mail or courier service at the last known address of them on file with the Commission.

* * * * *

(h) Every person who has been issued a Certificate (Performance) must submit to the Commission a semi-annual statement of any changes with respect to the information contained in the application or documents submitted in support thereof or a statement that no changes have occurred. Negative statements are required to indicate no change. These statements must cover the 6-month period of January through June and July through December, and include a statement of the highest unearned passenger vessel revenue accrued for each month in the 6-month reporting period. Such statements will be due within 30 days after the close of every such 6-month period. The reports required by this paragraph shall be submitted to the Bureau of Certification and Licensing at its office in Washington, DC 20573 by certified mail, courier service, or electronic submission.

* * * * *

(j) The amount of:

(1) The insurance as specified in § 540.5(a),

(2) The escrow account as specified in § 540.5(b),

(3) The guaranty as specified in § 540.5(c), or

(4) The surety bond as specified in § 540.6 shall not be required to exceed $15 million for one year after the effective date of this rule. Twelve (12) months after the effective date of this rule, the amount shall not exceed $22 million, and twenty four (24) months after the effective date of this rule, the amount shall not exceed $30 million.

(i) Every two years, on the anniversary after the cap on required financial responsibility reaches $30 million, the cap shall automatically adjust to the nearest $1 million based on changes as reflected in the U.S. Bureau of Labor Statistics' Consumer Price Index.

(ii) A certificant whose unearned passenger revenue at no time for the two immediately prior fiscal years has exceeded 150% of the required cap may submit a request to the Commission to substitute alternative forms of financial protection to evidence the financial responsibility as otherwise provided in this part. The Commission will consider such requests on a case by case basis. In determining whether and to what level to reduce the required amount, the Commission may consider the extent to which other statutory requirements provide relevant protections, the certificant's financial data, and other specific facts and circumstances.

(k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits held by its agents or any other person authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Public Law 89–777 and not permit use of its vessel, name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission. Failure to follow the procedures in this paragraph means the certificant shall retain full financial responsibility for indemnification of passengers for nonperformance of the transportation.

13. Remove Form FMC–131 to Subpart A of part 540.

14. Revise Form FMC–132A to Subpart A of Part 540 to read follows:

FORM FMC–132A TO SUBPART A OF PART 540

FORM FMC–132A

FEDERAL MARITIME COMMISSION

Passenger Vessel Surety Bond (Performance)

Surety Co. Bond No. _____
FMC Certificate No. _____

Know all men by these presents, that we _____ (Name of applicant), of _____ (City), _____ (State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____ (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of subpart A of part 540 of title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility and the supplying transportation and other services subject to subpart A of part 540 of title 46, Code of Federal Regulations, in accordance with the ticket contract between the Principal and the passenger, and

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to subpart A of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described. Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services in accordance with the ticket contract made by the Principal and the passenger while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of subpart A of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger shall not exceed the passage price paid by or on behalf of such passenger. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____, 20____, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail, courier service, or other electronic means such as email and fax to the other and to the Federal Maritime Commission at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds due under ticket contracts made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds arising from ticket contracts made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) or disbursements against this bond.

In witness whereof, the said Principal and Surety have executed this instrument on _____ day of _____, 20____.

PRINCIPAL

Name _____
By _____
(Signature and title)
Witness _____

SURETY

[SEAL]
Name _____
By _____
(Signature and title)
Witness _____

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

15. Revise Form FMC–133A to Subpart A of Part 540 to read follows:

FORM FMC–133A TO SUBPART A OF PART 540

FORM FMC–133A

FEDERAL MARITIME COMMISSION

Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act

Guaranty No _____
FMC Certificate No. _____

1. Whereas _____ (Name of applicant) (Hereinafter referred to as the ''Applicant'') is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule (''the Vessels''), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with section 3 of Pub. L. 89–777, 89th Congress, approved November 6, 1966 (''the Act'') then, provided that the Federal Maritime Commission (''FMC'') shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) (''Certificate''), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of section 3 of the Act, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger for such nonperformance.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed $_____.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of

transportation within the meaning of Section 3 of the Act, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing delivered by certified mail, courier service or other electronic means such as email and fax, that the Guarantor has elected to terminate this Guaranty except that:

(i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and

(ii) Such termination shall not affect the liability of the Guarantor for refunds arising from ticket contracts made by the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing or other electronic means such as email and fax, then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, subpart A of part 540 of title 46, Code of Federal Regulations, issued under Section 3 of Pub. L. 89–777 (80 Stat. 1357, 1358), entitled ''Security for the Protection of the Public.''

_____

(Place and Date of Execution)

_____

(Type Name of Guarantor)

_____

(Type Address of Guarantor)

By _____

(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

16. Revise Appendix A to Subpart A of Part 540 to read as follows:

Appendix A to Subpart A of Part 540—Example of Escrow Agreement for Use Under 46 CFR 540.5(b)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, made as of this ____ day of (month & year), by and between (Customer), a corporation/company having a place of business at (''Customer'') _____ _____ and (Banking Institution name & address) a banking corporation, having a place of business at (''Escrow Agent'').

Witnesseth:

WHEREAS, Customer wishes to establish an escrow account in order to provide for the indemnification of passengers in the event of non-performance of water transportation to which such passengers would be entitled, and to establish Customer's financial responsibility therefore; and

WHEREAS, Escrow Agent wishes to act as Escrow Agent of the escrow account established hereunder;

NOW, THEREFORE, in consideration of the premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Customer has established on (month & year) (the ''Commencement Date'') an escrow account with the Escrow Agent which escrow account shall hereafter be governed by the terms of this Agreement (the ''Escrow Account''). Escrow Agent shall maintain the Escrow Account in its name, in its capacity as Escrow Agent.

2. Customer will determine, as of the date prior to the Commencement Date, the amount of unearned passenger revenue, including any funds to be transferred from any predecessor Escrow Agent. Escrow Agent shall have no duty to calculate the amount of unearned passenger revenue. Unearned Passenger Revenues are defined as that passenger revenue received for water transportation and all other accommodations, services and facilities relating thereto not yet performed. 46 CFR 540.2(i).

3. Customer will deposit on the Commencement Date into the Escrow Account cash in an amount equal to the amount of Unearned Passenger Revenue determined under Paragraph 2 above plus a cash amount (''the Fixed Amount'') equal to (10 percent of the Customer's highest Unearned Passenger Revenue for the prior two fiscal years. For periods on or after (year of agreement (2009)), the Fixed Amount shall be determined by the Commission on an annual basis, in accordance with 46 CFR Part 540.

4. Customer acknowledges and agrees that until such time as a cruise has been completed and Customer has taken the actions described herein, Customer shall not be entitled, nor shall it have any interest in any funds deposited with Escrow Agent to the extent such funds represent Unearned Passenger Revenue.

5. Customer may, at any time, deposit additional funds consisting exclusively of Unearned Passenger Revenue and the Fixed Amount, into the Escrow Account and Escrow Agent shall accept all such funds for deposit and shall manage all such funds pursuant to the terms of this Agreement.

6. After the establishment of the Escrow Account, as provided in Paragraph 1, Customer shall on a weekly basis on each (identify day of week), or if Customer or Escrow Agent is not open for business on (identify day of week) then on the next business day that Customer and Escrow Agent are open for business recompute the amount of Unearned Passenger Revenue as of the close of business on the preceding business day (hereinafter referred to as the ''Determination Date'') and deliver a Recomputation Certificate to Escrow Agent on such date. In each such weekly recomputation Customer shall calculate the amount by which Unearned Passenger Revenue has decreased due to (i) the cancellation of reservations and the corresponding refund of monies from Customer to the persons or entities canceling such reservations; (ii) the amount which Customer has earned as revenue as a result of any cancellation fee charged upon the cancellation of any reservations; (iii) the amount which Customer has earned due to the completion of cruises; and (iv) the amount by which Unearned Passenger Revenue has increased due to receipts from passengers for future water transportation and all other accommodations, services and facilities relating thereto and not yet performed.

The amount of Unearned Passenger Revenue as recomputed shall be compared with the amount of Unearned Passenger Revenue for the immediately preceding period to determine whether there has been a net increase or decrease in Unearned Passenger Revenue. If the balance of the Escrow Account as of the Determination Date exceeds the sum of the amount of Unearned Passenger Revenue, as recomputed, plus the Fixed Amount then applicable, then Escrow Agent shall make any excess funds in the Escrow Account available to Customer. If the balance in the Escrow Account as of the Determination Date is less than the sum of the amount of Unearned Passenger Revenue, as recomputed, plus an amount equal to the Fixed Amount, Customer shall deposit an amount equal to such deficiency with the Escrow Agent. Such deposit shall be made in immediately available funds via wire transfer or by direct transfer from the Customer's U.S. Bank checking account before the close of business on the next business day following the day on which the Recomputation Certificate is received by Escrow Agent. The Escrow Agent shall promptly notify the Commission within two business days any time a deposit required by a Recomputation Certificate delivered to the Escrow Agent is not timely made.

7. Customer shall furnish a Recomputation Certificate, in substantially the form attached

hereto as Annex 1, to the Federal Maritime Commission (the ''Commission'') and to the Escrow Agent setting forth the weekly recomputation of Unearned Passenger Revenue required by the terms of Paragraph 6 above. Customer shall mail or fax to the Commission and deliver to the Escrow Agent the required Recomputation Certificate before the close of business on the business day on which Customer recomputes the amount of Unearned Passenger Revenue. Notwithstanding any other provision herein to the contrary, Escrow Agent shall not make any funds available to Customer out of the Escrow Account because of a decrease in the amount of Unearned Passenger Revenue or otherwise, until such time as Escrow Agent receives the above described Recomputation Certificate from Customer, which Recomputation Certificate shall include the Customer's verification certification in the form attached hereto as Annex 1. The copies of each Recomputation Certificate to be furnished to the Commission shall be mailed to the Commission at the address provided in Paragraph 25 herein. If copies are not mailed to the Commission, faxed or e-mailed copies shall be treated with the same legal effect as if an original signature was furnished. No repayment of the Fixed Amount may be made except upon approval of the Commission.

Within fifteen (15) days after the end of each calendar month, Escrow Agent shall provide to Customer and to the Commission at the addresses provided in Paragraph 25 below, a comprehensive statement of the Escrow Account. Such statement shall provide a list of assets in the Escrow Account, the balance thereof as of the beginning and end of the month together with the original cost and current market value thereof, and shall detail all transactions that took place with respect to the assets and investments in the Escrow Account during the preceding month.

8. At the end of each quarter of Customer's fiscal year, Customer shall cause the independent auditors then acting for it to conduct an examination in accordance with generally accepted auditing standards with respect to the weekly Recomputation Certificates furnished by Customer of the Unearned Passenger Revenues and the amounts to be deposited in the Escrow Account and to express their opinion within forty-five (45) days after the end of such quarter as to whether the calculations at the end of each fiscal quarter are in accordance with the provisions of Paragraph 6 of this Agreement. The determination of Unearned Passenger Revenue of such independent auditors shall have control over any computation of Unearned Passenger Revenue by Customer in the event of any difference between such determinations. To the extent that the actual amount of the Escrow Account is less than the amount determined by such independent auditors to be required to be on deposit in the Escrow Account, Customer shall immediately deposit an amount of cash into the Escrow Account sufficient to cause the balance of the Escrow Account to equal the amount determined to be so required. Such deposit shall be completed no later than the business day after receipt by the Escrow Agent of the auditor's opinion containing the amount of such deficiency.

The opinion of such independent auditors shall be furnished by such auditors directly to Customer, to the Commission and to the Escrow Agent at their addresses contained in this Agreement. In the event that a required deposit to the Escrow Agent is not made within one Business Day after receipt of an auditor's report or a Recomputation Certificate, Escrow Agent shall send notification to the Commission within the next two Business Days.

9. Escrow Agent shall invest the funds in the Escrow Account in Qualified Investments as directed by Customer in its sole and absolute discretion. ''Qualified Investments'' means, to the extent permitted by applicable law:

(a) Government obligations or obligations of any agency or instrumentality of the United States of America;

(b) Commercial paper issued by a United States company rated in the two highest numerical ''A'' categories (without regard to further gradation or refinement of such rating category) by Standard & Poor's Corporation, or in the two highest numerical ''Prime'' categories (without regard to further gradation or refinement of such rating) by Moody's Investor Services, Inc.;

(c) Certificates of deposit and money market accounts issued by any United States bank, savings institution or trust company, including the Escrow Agent, and time deposits of any bank, savings institution or trust company, including the Escrow Agent, which are fully insured by the Federal Deposit Insurance Corporation;

(d) Corporate bonds or obligations which are rated by Standard & Poor's Corporation or Moody's Investors Service, Inc. in one of their three highest rating categories (without regard to any gradation or refinement of such rating category by a numerical or other modifier); and

(e) Money market funds registered under the Federal Investment Company Act of 1940, as amended, and whose shares are registered under the Securities Act of 1933, as amended, and whose shares are rated ''AAA'', ''AA+'' or ''AA'' by Standard & Poor's Corporation.

10. All interest and other profits earned on the amounts placed in the Escrow Account shall be credited to Escrow Account.

11. This Agreement has been entered into by the parties hereto, and the Escrow Account has been established hereunder by Customer, to establish the financial responsibility of Customer as the owner, operator or charterer of the passenger vessel(s) (see Exhibit A), in accordance with Section 3 of Public Law 89–777, 89th Congress, approved November 6, 1966 (the ''Act''). The Escrow Account shall be held by Escrow Agent in accordance with the terms hereof, to be utilized to discharge Customer's legal liability to indemnify the passengers of the named vessel(s) for non-performance of transportation within the meaning of Paragraph 3 of the Act. The Escrow Agent shall make indemnification payments pursuant to written instructions from Customer, on which the Escrow Agent may rely, or in the event that such legal liability has not been discharged by Customer within twenty-one (21) days after any such passenger has obtained a final judgment (after appeal, if any) against Customer from a United States Federal or State Court of competent jurisdiction the Escrow Agent is authorized to pay funds out of the Escrow Account, after such twenty-one day period, in accordance with and pursuant to the terms of an appropriate order of a court of competent jurisdiction on receipt of a certified copy of such order.

As further security for Customer's obligation to provide water transportation to passengers holding tickets for transportation on the passenger vessel(s) (see Exhibit A) Customer will pledge to each passenger who has made full or partial payment for future passage on the named vessel(s) an interest in the Escrow Account equal to such payment. Escrow Agent is hereby notified of and acknowledges such pledges. Customers' instructions to Escrow Agent to release funds from the Escrow Account as described in this Agreement shall constitute a certification by Customer of the release of pledge with respect to such funds due to completed, canceled or terminated cruises. Furthermore, Escrow Agent agrees to hold funds in the Escrow Account until directed by Customer or a court order to release such funds as described in this Agreement. Escrow Agent shall accept instructions only from Customer, acting on its own behalf or as agent for its passengers, and shall not have any obligations at any time to act pursuant to instructions of Customer's passengers or any other third parties except as expressly described herein. Escrow Agent hereby waives any right of offset to which it is or may become entitled with regard to the funds on deposit in the Escrow Account which constitute Unearned Passenger Revenue.

12. Customer agrees to provide to the Escrow Agent all information necessary to facilitate the administration of this Agreement and the Escrow Agent may rely upon any information so provided.

13. Customer hereby warrants and represents that it is a corporation in good standing in its State of organization and that is qualified to do business in the State of. Customer further warrants and represents that (i) it possesses full power and authority to enter into this Agreement and fulfill its obligations hereunder and (ii) that the execution, delivery and performance of this Agreement have been authorized and approved by all required corporate actions.

14. Escrow Agent hereby warrants and represents that it is a national banking association in good standing. Escrow Agent further warrants and represents that (i) it has full power and authority to enter into this Agreement and fulfill its obligations hereunder and (ii) that the execution, delivery and performance of this Agreement have been authorized and approved by all required corporate actions.

15. This Agreement shall have a term of one (1) year and shall be automatically renewed for successive one (1) year terms unless notice of intent not to renew is delivered to the other party to this Agreement and to the Commission at least 90 days prior to the expiration of the current term of this

Agreement. Notice shall be given by certified mail to the parties at the addresses provided in Paragraph 25 below. Notice shall be given by certified mail to the Commission at the address specified in this Agreement.

16. (a) Customer hereby agrees to indemnify and hold harmless Escrow Agent against any and all claims, losses, damages, liabilities, cost and expenses, including litigation, arising hereunder, which might be imposed or incurred on Escrow Agent for any acts or omissions of the Escrow Agent or Customer, not caused by the negligence or willful misconduct of the Escrow Agent. The indemnification set forth herein shall survive the resignation or removal of the Escrow Agent and the termination of this agreement.

(b) In the event of any disagreement between parties which result in adverse claims with respect to funds on deposit with Escrow Agent or the threat thereof, Escrow Agent may refuse to comply with any demands on it with respect thereto as long as such disagreement shall continue and in so refusing, Escrow Agent need not make any payment and Escrow Agent shall not be or become liable in any way to Customer or any third party (whether for direct, incidental, consequential damages or otherwise) for its failure or refusal to comply with such demands and it shall be entitled to continue so to refrain from acting and so refuse to act until such conflicting or adverse demands shall finally terminate by mutual written agreement acceptable to Escrow Agent or by a final, non-appealable order of a court of competent jurisdiction.

17. Escrow Agent shall be entitled to such compensation for its services hereunder as may be agreed upon from time to time by Escrow Agent and Customer and which shall initially be set forth in a separate letter agreement between Escrow Agent and Customer. This Agreement shall not become effective until such letter agreement has been executed by both parties hereto and confirmed in writing to the Commission.

18. Customer may terminate this Agreement and engage a successor escrow agent, after giving at least 90 days written termination notice to Escrow Agent prior to terminating Escrow Agent if such successor agent is a commercial bank whose passbook accounts are insured by the Federal Deposit Insurance Corporation and such successor agrees to the terms of this agreement, or if there is a new agreement then such termination shall not be effective until the new agreement is approved in writing by the Commission. Upon giving the written notice to Customer and the Commission, Escrow Agent may terminate any and all duties and obligations imposed on Escrow Agent by this Agreement effective as of the date specified in such notice, which date shall be at least 90 days after the date such notice is given. All escrowed funds as of the termination date specified in the notice shall be turned over to the successor escrow agent, or if no successor escrow agent has been named within 90 days after the giving of such notice, then all such escrowed funds for sailing scheduled to commence after the specified termination date shall be returned to the person who paid such passage fares upon written approval of the Commission. In the event of any such termination where the Escrow Agent shall be returning payments to the passengers, then Escrow Agent shall request from Customer a list of passenger names, addresses, deposit/fare amounts and other information needed to make refunds. On receipt of such list, Escrow Agent shall return all passage fares held in the Escrow Account as of the date of termination specified in the notice to the passengers, excepting only amounts Customer is entitled to receive pursuant to the terms of this Agreement for cruises completed through the termination date specified in the notice, and all interest which shall be paid to Customer.

In the event of termination of this Agreement and if alternative evidence of financial responsibility has been accepted by the Commission and written evidence satisfactory to Escrow Agent of the Commission's acceptance is presented to Escrow Agent, then Escrow Agent shall release to Customer all passage fares held in the Escrow Account as of the date of termination specified in the notice. In the event of any such termination where written evidence satisfactory to Escrow Agent of the Commission's acceptance has not been presented to Escrow Agent, then Escrow Agent shall request from Customer a list of passenger names, addresses, deposit/fare amounts and other information needed to make refunds. On receipt of such list, Escrow Agent shall return all passage fares held in the Escrow Account as of the date of termination specified in the notice to the passengers, excepting only amounts Customer is entitled to receive pursuant to the terms of this Agreement for cruises completed through the termination date specified in the notice, and all interest which shall be paid to Customer. Upon termination, Customer shall pay all costs and fees previously earned or incurred by Escrow Agent through the termination date.

19. Neither Customer nor Escrow Agent shall have the right to sell, pledge, hypothecate, assign, transfer or encumber funds or assets in the Escrow Account except in accordance with the terms of this Agreement.

20. This Agreement is for the benefit of the parties hereto and, accordingly, each and every provision hereof shall be enforceable by any or each or both of them. Additionally, this Agreement shall be enforceable by the Commission. However, this Agreement shall not be enforceable by any other party, person or entity whatsoever.

21. (a) No amendments, modifications or other change in the terms of this Agreement shall be effective for any purpose whatsoever unless agreed upon in writing by Escrow Agent and Customer and approved in writing by the Commission.

(b) No party hereto may assign its rights or obligations hereunder without the prior written consent of the other, and unless approved in writing by the Commission. The merger of Customer with another entity or the transfer of a controlling interest in the stock of Customer shall constitute an assignment hereunder for which prior written approval of the Commission is required, which approval shall not be unreasonably withheld.

22. The foregoing provisions shall be binding upon undersigned, their assigns, successors and personal representative.

23. The Commission shall have the right to inspect the books and records of the Escrow Agent and those of Customer as related to the Escrow Account. In addition, the Commission shall have the right to seek copies of annual audited financial statements and other financial related information.

24. All investments, securities and assets maintained under the Escrow Agreement will be physically located in the United States.

25. Notices relating to this Agreement shall be sent to Customer at (address) and to Escrow Agent at (address) or to such other address as any party hereto may hereafter designate in writing. Any communication sent to the Commission or its successor organization shall be sent to the following address: Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol, N.W., Washington, D.C. 20573–0001.

26. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

27. This Agreement is made and delivered in, and shall be construed in accordance with the laws of the State of _____ without regard to the choice of law rules.

IN WITNESS WHEREOF, the undersigned have each caused this Agreement to be executed on their behalf as of the date first above written.

By: _____
Title: _____

By: _____
Title: _____

EXHIBIT A

ESCROW AGREEMENT, dated _____ by and between (Customer) and (Escrow Agent).

Passenger Vessels Owned or Chartered

ANNEX 1

RECOMPUTATION CERTIFICATE

To: Federal Maritime Commission
And To: (''Bank'')

The undersigned, the Controller of _____ hereby furnishes this Recomputation Certificate pursuant to the terms of the Escrow Agreement dated _____, between the Customer and (''Bank''). Terms herein shall have the same definitions as those in such Escrow Agreement and Federal Maritime Commission regulations.

I. Unearned Passenger Revenue as of (''Date'') was:
$_____
a. Additions to unearned Passenger Revenue since such date were:
1. Passenger Receipts: $_____
2. Other (Specify) $_____
3. Total Additions: $_____
b. Reductions in Unearned Passenger Revenue since such date were:
1. Completed Cruises: $_____
2. Refunds and Cancellations: $_____
3. Other (Specify) $_____
4. Total Reductions: $_____

II. Unearned Passenger Revenue as of the date Of this Recomputation Certificate is: $_____

a. Excess Escrow Amount $_____

III. Plus the Required Fixed Amount: $_____

IV. Total Required in Escrow: $_____

V. Current Balance in Escrow Account: $_____

VI. Amount to be Deposited in Escrow Account: $_____

VII. Amount of Escrow Account available to Operator: $_____

VIII. I declare under penalty of perjury that the above information is true and correct.

Dated: _____

_____

(Signature)

Name:

Title:

_____

(Signature)

Name:

Title:

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–23906 Filed 9–19–11; 8:45 am]

BILLING CODE 6730–01–P

Notices

Federal Register
Vol. 76, No. 182
Tuesday, September 20, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given of a public meeting of the Committee on Rulemaking of the Assembly of the Administrative Conference of the United States. The committee will meet to discuss a recommendation concerning agency innovations in e-Rulemaking for consideration by the full Conference. Complete details regarding the committee meeting, a related research report, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found in the ''Research'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''Research'' -> ''Conference Projects'' -> ''Agency Innovations in e-Rulemaking.''

Comments may be submitted by e-mail to *Comments@acus.gov,* with ''Committee on Rulemaking'' in the subject line, or by postal mail to ''Committee on Rulemaking Comments'' at the address given below. To be guaranteed consideration, comments must be received no later than five calendar days before the meeting.

ADDRESSES: The meetings will be held at 1120 20th Street, NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Emily Schleicher Bremer, Designated Federal Officer, Administrative Conference of the United States, 1120 20th Street, NW., Suite 706 South, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will meet to consider a draft recommendation concerning agency innovations in e-Rulemaking. The committee will discuss topics such as using agency websites and social media to promote participation in rulemaking proceedings and improving access to rulemaking information on agency websites.

DATES: Thursday, October 6, from 2 p.m. to 5 p.m.

Designated Federal Officer: Emily Schleicher Bremer.

Dated: September 15, 2011.

Jonathan R. Siegel,

Director of Research & Policy.

[FR Doc. 2011–24056 Filed 9–19–11; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Supplemental Nutrition Assistance Program Pre-Screening Tool

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this revision to a currently approved collection. The information collection involves the use of a Web-based pre-screening tool for the general public to use to determine potential eligibility for Supplemental Nutrition Assistance Program benefits.

DATES: Written comments must be submitted on or before November 21, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Angela Kline, Branch Chief, Certification Policy Branch, Program Development Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 810, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Angela Kline at 703–305–2486 or via e-mail to *Angela.Kline@fns.usda.gov.*

Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 810.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Angela Kline at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program Pre-Screening Tool.

OMB Number: 0584–0519.

Expiration Date: December 31, 2011.

Type of Request: Revision of a currently approved collection.

Abstract: In June 2003, the Food and Nutrition Service (FNS) deployed an interactive web-based pre-screening tool that can be utilized by the general public to determine potential eligibility for benefits in the Supplemental Nutrition Assistance Program (SNAP). Once the user enters household size, income, expenses and resource information, the tool will calculate and provide the user with an estimated range of benefits that the household may be eligible to receive. Since SNAP eligibility and benefit amount may vary by location, FNS makes it clear that the tool is only an estimator and the household will need to contact the local agency to determine actual eligibility and the appropriate benefit amount. Other data collected are:

• State: State or territory in which the user resides;
• Citizenship: whether each member is a U.S. citizen;
• Number of Children: number of children in the household;
• Number of Elderly: number of elderly members in the household;
• Migrant Workers: is anyone in the household a seasonal or migrant farm worker;
• Homeless: is the household homeless or living in a shelter;
• User Type: who is using the tool; and
• User Referral: how the user heard about the tool.

Although the tool also requests the name and age of the user, FNS does not retain this information nor does it request other personally identifiable information such as social security numbers, birthdays, etc. about the household itself in the tool. However, the system does request the following information during the initial process in which the user enters data:

• Whether the user is using the tool for personal reasons or on behalf of others; and
• If they are using it on behalf of others, the user will be asked to identify him/herself (e.g., relative of a person in need, advocacy organization, faith-based group, etc.) using a drop down menu.

Once the user logs out of the system, none of the user-provided information is retained by FNS.

Since this information collection was last extended, participation in the program increased by approximately 50 percent, primarily the result of significantly higher unemployment leading to increased participation. The estimate is based participation data extracted from the FNS National Databank using a comparison in participation for the 3-year period prior to the current burden estimate with participation data for the last two years. Assuming a similar increase in the number of potential applicants who will use the prescreening tool, FNS projects an annual burden of 66,132 hours representing an increase of 22,132 over the burden estimate of 44,000 hours used in the current approval of this information collection. Because none of the data entered by users is retained, there is no recordkeeping requirement associated with this information collection.

OMB #0584–0519	Requirement	Estimated # respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours
Affected Public: Potential SNAP clients						
Reporting Burden	Completion of SNAP Prescreening Tool.	396,000	1	396,000	0.167	66,132
	Reporting Totals	396,000	1	396,000	0.167	66,132
Recordkeeping Burden	Recordkeeping	0	0	0	0	0
	Recordkeeping Totals	0	0	0	0	0
	Total Recordkeeping and Reporting Burden.	396,000		396,000	0.167	66,132
	Total Number of Record Keepers.	0				

Dated: September 12, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–24085 Filed 9–19–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Waivers Under Section 6(o) of the Food and Nutrition Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a revision of a currently approved collection. The purpose of Section 6(o) of the Food and Nutrition Act is to establish a time limit for the receipt of benefits under the Supplemental Nutrition Assistance Program (SNAP) for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines ''that the area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals.''

As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that the United States Department of Agriculture (USDA) can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is, therefore, necessary in order to obtain waivers of the SNAP time limit.

DATES: Written comments must be received on or before November 21, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Angela Kline, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive Suite 812, Alexandria, VA 22302. Comments may also be faxed to the attention of Ms. Kline at (703) 305–2486 or sent by e-mail to *Angela.Kline@fns.udsda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 812. All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Kline at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Title: Waivers under Section 6(o) of the Food and Nutrition Act.

OMB Number: 0584–0479.

Expiration Date: December 31, 2011.

Type of Request: Revision of a currently approved collection.

Abstract: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193, 110 Stat. 2323 amended Section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o)) to establish a time limit for the receipt of food stamp benefits for certain able-bodied adults without dependents (ABAWDs) who are not working. This time limit is confined to adults between 18 and 50 years of age that do not have children or adults dependent upon them. ABAWD recipient eligibility is limited to three months within a 36 month period, unless the individual is working, or participating in a designated employment and training activity, for 20 hours per week. (**Note:** pursuant to the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234, 122 Stat. 923, enacted May 22, 2008), the Food Stamp Act was renamed the Food and Nutrition Act of 2008 and the Food Stamp Program was renamed the Supplemental Nutrition Assistance Program [SNAP].) The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines ''that the area in which the individuals reside has an unemployment rate of over 10 percent or does not have a sufficient number of jobs to provide employment for the individuals.''

As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that the Secretary can make the required determination as to the area's unemployment rate or insufficiency of available jobs. This is established by State agencies demonstrating that the statewide, or a geographical region's, unemployment rate exceeds 10%, is 120% or more of the national unemployment rate, or is on Department of Labor (DOL) ''trigger'' list for extended unemployment insurance benefits. This collection of information is necessary in order to obtain waivers of the SNAP recipient time limit.

Based on the experience of the Food and Nutrition Service (FNS) during calendar year 2008, FNS projects that on an annual basis 48 State agencies will submit requests for waivers of the time limit for ABAWD recipients based on an insufficiency of jobs. Using unemployment projections from the Congressional Budget Office (CBO) through 2014, FNS believes that labor market conditions in 2008 would be more representative of the U.S. labor market over the next three years than would the preceding three years.

During the period from April 1, 2009 through September 30, 2010, the time limit for able-bodied adults without dependents was suspended by the American Recovery and Reinvestment Act (Pub. L. 111–5) which suspended the need for the waivers that are included in this information collection. Subsequent to September 30, 2010, most waivers were based on State eligibility for extended unemployment benefits (EB) under trigger notices issued by the U.S Department of Labor Employment and Training Administration (DOLETA).

Of the 48 State waiver requests, FNS projects that 36 waiver requests will be based on labor market data for clients in specific geographic areas within states that have an unemployment rate greater than 20 percent above the national average in that area. A typical State waiver includes several geographic areas where each geographic area may include multiple political jurisdictions. FNS projects one of the waiver requests will be based solely on the designation of areas as Labor Surplus Areas (LSAs) by the DOLETA, eleven will be statewide waivers based on entitlement to EUC based on trigger notices issued by the DOL. For waivers based on the unemployment rate of specified geographic areas within a State, FNS estimates a response time of 35 hours for each waiver request. The 35 hour time per response reflects preparation of waiver requests by the State agency which requires detailed analysis of labor markets within the State. These waivers frequently cover multiple timeframes and multi-county labor market areas. FNS projects a total burden of 1,260 hours for the 36 waivers covering specific geographic areas based on unemployment rate greater than 20 percent above the national average. For the waiver based solely on LSA designation and the 11 estimated waivers based on trigger notices, FNS estimates a burden of 48 hours or four hours per waiver since the data supporting these waivers is readily available from the DOL Web site and requires minimal preparation by the State agencies. FNS projects a total burden of 1,308 hours for this information collection, a reduction of 372 hours from the prior approved information collection burden of 1,680 hours. There is no specific recordkeeping requirement directly associated with this information collection.

OMB # 0584–0479	Requirement	Estimated number respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours
Affected Public: State Agencies						
Reporting Burden	Submission of waiver request based on labor market data.	36	1	36	35	1,260
	Submission of waiver request based on Labor Surplus Area designation.	1	1	1	4	4
	Submission of waiver request based on DOL trigger notices.	11	1	4	4	44

OMB # 0584–0479	Requirement	Estimated number respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours
	Reporting Totals	48	.....	48	.....	1308
Recordkeeping Burden	Recordkeeping	0	0	0	0	0
	Recordkeeping Totals.	0	0	0	0	0
	Total Recordkeeping and Reporting Burden.	48	.....	48	.....	1308

Dated: September 12, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–24086 Filed 9–19–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc National Forest, Alturas, CA, Supplemental Information for the Final Environmental Impact Statement (FEIS) Motorized Travel Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement the Modoc National Forest Motorized Travel Management Final Environmental Impact Statement (FEIS) issued in November 2009 [NOI **Federal Register** on May 12, 2008 (Volume 73, Number 92)].

SUMMARY: This document will provide supplemental information that supports:

- The addition of 331 miles of unauthorized routes to the National Forest Transportation System (NFTS) on the Modoc National Forest.
- The decision to change the vehicle class on 513 miles of Maintenance Level 3 (ML3) roads to allow for mixed use by both highway legal and non-highway legal vehicles.

And will include:

- A Riparian Conservation Objective Analysis (RCOA) and proof of compliance with the Forest Plan Standards and Guidelines as articulated in the Sierra Nevada Forest Plan Amendment for proposed additions of motor vehicle routes in Critical Aquatic Refuges (CARs) and Riparian Conservation Areas (RCAs).
- Confirmation that the Responsible Official has met the requirements of pertinent laws, regulations, or the Modoc LRMP for ungulates with regard to routes added to the NFTS as well as ML3 routes being changed to allow mixed-use.

DATES: Completion date for the supplemental document is expected to be in December 2011. There will be a 45-day comment period once the document is issued.

ADDRESSES: Send written comments to Modoc National Forest, Supplemental Travel Management, 800 W. 12th Street, Alturas, CA 96101. Comments may also be sent via e-mail to *comments-pacificsouthwest-modoc@fs.fed.us* please put Supplemental Travel Management in the Subject Line, or via facsimile to 530–233–8309, please address to Supplemental Travel Management.

FOR FURTHER INFORMATION CONTACT: Kathleen Borovac at 530–233–8754 or the Public Affairs Officer at 530–640–1168.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Modoc National Forest is creating this document to bolster the Modoc National Forest Motorized Travel Management FEIS by correcting any errata and by providing supplemental information that was found to be missing from the original document. This information is provided in response to the Appeal Deciding Officers' decision dated March 11, 2010 that reversed part of the original decision.

Proposed Action

The Modoc National Forest proposes to add 331 miles of unauthorized routes to the National Forest Transportation System (NFTS) on the Modoc National Forest and change the vehicle class on 513 miles of Maintenance Level 3 (ML3) roads to allow for mixed use by both highway legal and non-highway legal vehicles as originally proposed in the Motorized Travel Management FEIS and ROD (November, 2009).

Responsible Official

Forest Supervisor, Kimberly Anderson, Modoc National Forest.

Nature of Decision To Be Made

The Responsible Official will decide whether to (1) Implement the Proposed Action; (2) take no action.

Preliminary Issues

This document will supplement the existing Motorized Travel Management FEIS (Volume 1, Volume 2, and (ROD) Record of Decision) and includes a decision letter signed by Angela Coleman (Appeal Deciding Officer) dated March 11, 2011 that reversed part of the decision. All of the information in the existing Travel Management EIS will be considered when creating the Supplemental Information document including, but not limited to, the response to comments and public scoping comments.

Scoping Process

This notice of intent initiates the development of a supplement for the Motorized Travel Management FEIS. All interested parties from the previous Travel Management FEIS will be notified of the supplement's availability when completed.

Once the document is issued, it is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of this supplemental document. All scoping comments from the previous Motorized Travel Management FEIS have already been considered and do not need to be resubmitted.

Dated: September 8, 2011.

Kimberly H. Anderson,

Forest Supervisor.

[FR Doc. 2011–23613 Filed 9–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Aberdeen, SD; Decatur, IL; Hastings, NE; Fulton, IL; the State of Missouri, and the State of South Carolina Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of Aberdeen Grain Inspection, Inc. (Aberdeen); Decatur Grain Inspection, Inc. (Decatur); Hastings Grain Inspection, Inc. (Hastings); John R. McCrea Agency, Inc. (McCrea); Missouri Department of Agriculture (Missouri); and South Carolina Department of Agriculture (South Carolina) to provide official services under the United States Grain Standards Act, as amended (USGSA).

DATES: *Effective Date:* October 1, 2011.

ADDRESSES: William A. Ashley, Acting Branch Chief, Quality Assurance and Designation Branch, Compliance Division, GIPSA, USDA, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: William A. Ashley, 202–720–8262 or *William.A.Ashley@usda.gov*.

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the March 22, 2011, **Federal Register** (76 FR 15937), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Aberdeen Grain Inspection, Inc. (Aberdeen); Decatur Grain Inspection, Inc. (Decatur); Hastings Grain Inspection, Inc. (Hastings); John R. McCrea Agency, Inc. (McCrea); Missouri Department of Agriculture (Missouri); and South Carolina Department of Agriculture (South Carolina). Applications were due by April 21, 2011.

Aberdeen, Decatur, Hastings, McCrea, Missouri, and South Carolina were the sole applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l) of the USGSA (7 U.S.C. 79(f)) and determined that Aberdeen, Decatur, Hastings, McCrea, Missouri, and South Carolina are qualified to provide official services in the geographic area specified in the March 22, 2011, **Federal Register** for which they applied. This designation action to provide official services in these specified areas is effective October 1, 2011 and terminates on September 30, 2014

Interested persons may obtain official services by contacting this agency at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Aberdeen	Aberdeen, SD, (605) 225–8432; Additional Location: Mitchell, SD	10/1/2011	9/30/2014
Decatur	Decatur, IL, (217) 429–2466	10/1/2011	9/30/2014
Hastings	Hastings, NE, (402) 462–4254; Additional Location: Grand Island, NE	10/1/2011	9/30/2014
McCrea	Fulton, IL, (815) 589–9955	10/1/2011	9/30/2014
Missouri	Jefferson City, MO, (573) 751–5515; Additional Locations: Kansas City, Marshall, St. Joseph, New Madrid, and Vandalia, MO.	10/1/2011	9/30/2014
South Carolina	Columbia, SC, (803) 734–2200; Additional Location: Vance, SC	10/1/2011	9/30/2014

Section 7(f)(1) of the USGSA authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)(1)).

Under section 7(g)(1) of the USGSA, designations of official agencies are effective for no longer than 3 years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Authority: 7 U.S.C. 71–87k.

Alan Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2011–24041 Filed 9–19–11; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Jamestown, ND; Lincoln, NE; Memphis, TN; and Sioux City, IA Areas; Request for Comments on the Official Agencies Servicing These areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on March 31, 2012. We are asking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agencies: Grain Inspection, Inc. (Jamestown); Lincoln Inspection Service, Inc. (Lincoln); Midsouth Grain Inspection Service (Midsouth); and Sioux City Inspection and Weighing Service Company (Sioux City).

DATES: Applications and comments must be received by October 20, 2011.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Hand Delivery/Courier Address:* William A. Ashley, Acting Quality Assurance and Designation Branch Chief, Quality Assurance and Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.

• *Mail:* William A. Ashley, Acting Quality Assurance and Designation Branch Chief, Quality Assurance and Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

• *Fax:* William A. Ashley, 202–690–2755.

• *E-mail: William.A.Ashley@usda.gov.*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: William A. Ashley, 202–720–8262 or *William.A.Ashley@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 7(f)(1) of the *United States Grain Standards Act* (USGSA) (7 U.S.C. 71–87k) authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. Under section 7(g)(1) of the USGSA, designations of official agencies are effective for 3 years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Areas Open for Designation

Jamestown

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the States of Minnesota and North Dakota, are assigned to this official agency.

• *In Minnesota:* Traverse, Grant, Douglas, Todd, Morrison, Mille Lacs, Kanabec, Pine, Big Stone, Stevens, Pope, Stearns, Benton, Isanti, Chisago, Swift, Kandiyohi, Meeker, Wright, Sherburne, Anoka, Lac Qui Parle, and Chippewa Counties.

• *In North Dakota:* Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to the northern Wells County line, the northern Wells and Eddy County lines east; the eastern Eddy County line south to the northern Griggs County line; the northern Griggs county line east to State Route 32; Bounded on the East by State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line; Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route l3; State Route l3 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Burlington-Northern line; the Burlington-Northern line northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and Bounded on the West by the western North Dakota State line north to Interstate 94. Jamestown's assigned geographic area does not include the following grain elevators inside Jamestown's area which have been and will continue to be serviced by the following official agency: Minot Grain Inspection, Inc.: Benson Quinn Company, Underwood; and Falkirk Farmers Elevator, Washburn, both in McLean County; and Harvey Farmers Elevator, Harvey, Wells County.

Lincoln

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Iowa and Nebraska, is assigned to this official agency:

• Bounded on the North (in Nebraska) by the northern York, Seward, and Lancaster County lines; the northern Cass County line east to the Missouri River; the Missouri River south to U.S. Route 34; (in Iowa) U.S. Route 34 east to Interstate 29; Bounded on the East by Interstate 29 south to the Fremont County line; the northern Fremont and Page County lines; the eastern Page County line south to the Iowa-Missouri State line; the Iowa-Missouri State line west to the Missouri River; the Missouri River south-southeast to the Nebraska-Kansas State line; Bounded on the South by the Nebraska-Kansas State line west to County Road 1 mile west of U.S. Route 81; and Bounded on the West (in Nebraska) by County Road 1 mile west of U.S. Route 81 north to State Highway 8; State Highway 8 east to U.S. Route 81; U.S. Route 81 north to the Thayer County line; the northern Thayer County line east; the western Saline County line; the southern and western York County lines.

Lincoln's assigned geographic area does not include the following grain elevators inside Lincoln's area which have been and will continue to be serviced by the following official agency: Omaha Grain Inspection Service, Inc.: Goode Seed & Grain, McPaul, Fremont County, Iowa; and Haveman Grain, Murray, Cass County, Nebraska.

Midsouth

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the States of Arkansas, Mississippi, Tennessee, and Texas, are assigned to this official agency.

• The entire State of Arkansas.

• The entire State of Mississippi, except those export port locations within the State.

• Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties, Tennessee.

• Bowie and Cass Counties, Texas.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Cargill, Inc., Tiptonville, Lake County, Tennessee (located inside Cairo Grain Inspection Agency, Inc.'s, area).

Sioux City

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the States of Iowa, Minnesota, Nebraska, and South Dakota, are assigned to this official agency.

• In Iowa: Bounded on the North by the northern Iowa State line from the Big Sioux River east to U.S. Route 59; U.S. Route 59 south to B24; B24 east to the eastern O'Brien County line; the O'Brien County line south; the northern Buena Vista County line east to U.S. Route 71; U.S. Route 71 north to the northern Iowa State line east to U. S. Route 169; Bounded on the East by U.S. Route 169 south to State Route 9; State Route 9 west to U.S. Route 169; U.S. Route 169 south to the northern Humboldt County line; the Humboldt County line east to State Route 17; State Route 17 south to C54; C54 east to U.S. Route 69; U.S. Route 69 south to the northern Hamilton County line; the Hamilton County line west to R38; R38 south to U.S. Route 20; U.S. Route 20 west to the eastern and southern Webster County lines to U.S. Route 169; U.S. Route 169 south to E18; E18 west to the eastern Greene County line; the Greene County line south to U.S. Route 30; Bounded on the South by U.S. Route 30 west to E53; E53 west to N44; N44 north to U.S. Route 30; U.S. Route 30 west to U.S. Route 71; U.S. Route 71 north to the southern Sac and Ida County lines; the eastern Monona County line south to State Route 37; State Route 37 west to State Route 175; State Route 175 west to the Missouri

River; and Bounded on the West by the Missouri River north to the Big Sioux River; the Big Sioux River north to the northern Iowa State line.

• In Minnesota: Yellow Medicine, Renville, Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Jackson, and Martin Counties. In Nebraska: Cedar, Dakota, Dixon, Pierce (north of U.S. Route 20), and Thurston Counties.

• In South Dakota: Bounded on the North by State Route 44 (U.S. 18) east to State Route 11; State Route 11 south to A54B; A54B east to the Big Sioux River; Bounded on the East by the Big Sioux River; and Bounded on the South and West by the Missouri River.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: West Central Coop, Boxholm, Boone County (located inside Central Iowa Grain Inspection Service, Inc.'s, area); and West Bend Elevator Co., Algona, Kossuth County; Stateline Coop., Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and North Central Coop, Holmes, Wright County (located inside D. R. Schaal Agency's area).

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the USGSA and 7 CFR 800.196(d). Designation in the specified geographic areas is for the period beginning April 1, 2012, and ending March 31, 2015. To apply for designation or for more information, contact William A. Ashley at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Jamestown, Lincoln, Midsouth, and Sioux City official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to William A. Ashley at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Alan Christian,

Acting Administrator, Grain Inspection, Packers, and Stockyards Administration.

[FR Doc. 2011–24040 Filed 9–19–11; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1780]

Reorganization of Foreign-Trade Zone 41 Under Alternative Site Framework Milwaukee, WI

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) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Port of Milwaukee, grantee of Foreign-Trade Zone 41, has an application before the Board (FTZ Docket 23–2011, filed 3/21/2011) for authority to reorganize under the ASF with a service area of Kenosha, Milwaukee and Racine Counties, Wisconsin, in and adjacent to the Milwaukee Customs and Border Protection port of entry, FTZ 41's existing Sites 2–4 would be categorized as magnet sites, existing Sites 1 and 5 would be categorized as usage-driven sites and the application also proposes four additional usage-driven sites (Sites 6–9);

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 16726–16727, 3/25/2011) 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 Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 41 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2 and 4 if not activated by August 31, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 1 and 5–9 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by August 31, 2014.

Signed at Washington, DC, this 31st day of August 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–24119 Filed 9–19–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Survey of International Air Travelers

AGENCY: International Trade Administration, 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 November 21, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Champley or Ron Erdmann, ITA's Office of Travel & Tourism Industries (OTTI), Phone: (202) 482–0140, and fax: (202) 482–2887. E–Mail: *Richard.Champley@trade.gov* or *Ron.Erdmann@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The ''Survey of International Air Travelers'' (Survey) program,

administered by the Office of Travel and Tourism Industries (OTTI) of the International Trade Administration provides source data required to (1) estimate international travel and passenger fare exports, imports and the trade balance for the United States, (2) comply with the *U.S. Travel Promotion Act of 2009* (Pub. L. 111–145), collect, analyze and report information to the Corporation for Travel Promotion (CTP), and support the National Export Initiative (NEI) to double exports for the country, (3) to comply with the 1961, 1981, and 1996 travel and tourism related acts to collect and publish comprehensive international travel and tourism, statistics and other marketing information, and (4) support the continuation of the Travel & Tourism Satellite Accounts for the United States, which provide the only spending and employment figures for the industry.

The Survey program contains the core data that is analyzed and communicated by OTTI with other government agencies, associations and businesses that share the same objective of increasing U.S. international travel exports. The Survey assists OTTI in assessing the economic impact of international travel on state and local economies, providing visitation estimates, key market intelligence, and identifying traveler and trip characteristics. The U.S. Department of Commerce assists travel industry enterprises to increase international travel and passenger fare exports for the country as well as outbound travel on U.S. carriers. The Survey program provides the only available estimates of nonresident visitation to the states and cities within the United States, as well as U.S. resident travel abroad.

A new survey instrument (questionnaire) (English version plus its translations into eleven foreign languages) has been developed that reflects input from over 70 respondents, including:

- Travel Industry (airlines, travel associations, destinations, lodging); Consultants; Financial Firms; Educational Institutions; and U.S. Government Agencies

This new Survey questionnaire reflects changes in various questions relating to:

- Trip Purpose; Payment Methods; Booking/Information Sources; additional package components, health care/vaccinations/travel insurance information; Additional transportation used responses; Assessment of the Visitor's Experience; and Intentions for Further Travel to the United States; Ethnicity/race.

Survey questions relating to a traveler's general impression of their airline carrier, flight connections, several airline rating attributes, their baggage delivery wait time, fewer activities, number of trips in the last five years, and whether they had personal safety concerns have been eliminated from the new Survey questionnaire.

II. Method of Collection

Within the ''Survey of International Air Travelers (Survey)'' program, the majority of the passenger surveys are collected in U.S. departure gate areas of U.S. airports. There is a small portion of all passenger surveys that are collected on-board flights which have departed the United States (except to Canada). U.S. and foreign flag airlines that voluntarily participate in the Survey program enable this collection in either U.S. departure gate areas or on-board flights.

III. Data

OMB Control Number: 0625–0227.

Form Number(s): None.

Type of Review: Regular submission (extension and revision of a currently approved information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 99,400.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 24,850.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 14, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24050 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

Background

On July 1, 2011, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet and strip from India covering the period July 1, 2010, through June 30, 2011. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609, 38610 (July 1, 2010). The Department received a timely request for an AD administrative review from Petitioners [1] for five companies: Ester Industries Limited, Garware Polyester Ltd., Jindal Poly Films Limited of India, Polyplex Corporation Ltd., and SRF Limited. The Department also received timely requests for an AD administrative review from Vacmet India Ltd. (Vacmet) and Polypacks Industries of India (Polypacks). On August 26, 2011, the Department published a notice of initiation of administrative review with respect to Ester Industries Limited, Garware Polyester Ltd., Jindal Poly Films Limited of India, Polyplex Corporation Ltd., SRF Limited, Vacmet and Polypacks. *See Initiation of Antidumping and Countervailing Duty*

[1] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc.

Administrative Reviews and Deferral of Initiation of Administrative Review, 76 FR 53404 (August 26, 2011). On August 23, 2011, Vacmet and Polypacks withdrew their requests for an AD administrative review.

Rescission, In Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Vacmet's and Polypacks' requests were submitted within the 90-day period and, thus, are timely. Because Vacmet's and Polypacks' withdrawals of request for an AD administrative review are timely and because no other party requested a review of Vacmet and Polypacks, in accordance with 19 CFR 351.213(d)(1), we are rescinding this AD administrative review with respect to Vacmet and Polypacks.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Vacmet and Polypacks shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, 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 section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–24148 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before October 11, 2011. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 11–060. *Applicant:* Brookhaven National Laboratory, 480 Cornell Avenue, Upton, New York 11973. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to study crystalline and electronic structures of energy-related matter including superconductors and thermoelectric materials, using electron diffraction, high resolution imaging, and other techniques. The objectives include determining the links of structures to the physical properties of materials, to help improve the properties of such materials. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 24, 2011.

Dated: September 14, 2011.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2011–24122 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Ohio State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 11–047. *Applicant:* Ohio State University, Columbus, OH 43210. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 76 FR 50997, August 17, 2011.

Docket Number: 11–050. *Applicant:* Southwest Research Institute, San Antonio, TX 78239–5166. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 76 FR 50997, August 17, 2011.

Docket Number: 11–052. *Applicant:* Southern University and A&M College, Baton Rouge, LA 70813. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 76 FR 50997, August 17, 2011.

Docket Number: 11–053. *Applicant:* University of Texas Health Science Center-Houston, Houston, TX 77303. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 76 FR 50997, August 17, 2011.

Docket Number: 11–054. *Applicant:* Battelle Energy Alliance, Idaho National Laboratory, Idaho Falls, ID 83415. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 76 FR 50997, August 17, 2011.

Docket Number: 11–055. *Applicant:* University of Washington, Seattle, WA 98195. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 76 FR 50997, August 17, 2011.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign

instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instrument were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: September 14, 2011.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–24123 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Purdue University; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, DC.

Docket Number: 11–026. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* SPSx Moisture Sorption Analyzer. *Manufacturer:* Projekt Messtechnik, Germany. *Intended Use:* See notice at 76 FR 52314, August 22, 2011. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instrument described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. *Reasons:* This instrument is unique in that it monitors multiple samples at one time, ensuring that conditions do not vary from one experiment to the next.

Dated: *September 14, 2011.*

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2011–24120 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Bob Palmer and Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–9068 and (202) 482–5260, respectively.

Background

On May 27, 2011, the Department of Commerce (''Department'') published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') covering the period April 1, 2010, to March 31, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 30912, 30913 (May 27, 2011) (''*Initiation Notice*''). On August 25, 2011, Petitioners withdrew their request for an administrative review on the following companies:

AmeriAsia Advanced Activated Carbon Products Co., Ltd.; Anhui Handfull International Trading (Group) Co., Ltd.; Anhui Hengyuan Trade Co. Ltd.; Anyang Sino-Shon International Trading Co., Ltd.; Baoding Activated Carbon Factory; Beijing Broad Activated Carbon Co., Ltd.; Beijing Haijian Jiechang Environmental Protection Chemicals; Beijing Hibridge Trading Co., Ltd.; Bengbu Jiutong Trade Co. Ltd.; Changji Hongke Activated Carbon Co., Ltd. Chengde Jiayu Activated Carbon Factory; China National Building Materials and Equipment Import and Export Corp.; China National Nuclear General Company; China Nuclear Ningxia Activated Carbon Plant; Da Neng Zheng Da Activated Carbon Co., Ltd.; Datong Carbon Corporation; Datong Changtai Activated Carbon Co., Ltd.; Datong City Zuoyun County Activated Carbon Co., Ltd.; Datong Fenghua Activated Carbon; Datong Forward Activated Carbon Co., Ltd.; Datong Fuping Activated Carbon Co. Ltd.; Datong Guanghua Activated Co., Ltd.; Datong Hongtai Activated Carbon Co., Ltd.; Datong Huanqing Activated Carbon Co., Ltd.; Datong Huaxin Activated Carbon; Datong Huibao Active Carbon Co., Ltd.; Datong Huibao Activated Carbon Co., Ltd.; Datong Huiyuan Cooperative Activated Carbon Plant; Datong Kaneng Carbon Co. Ltd.; Datong Locomotive Coal & Chemicals Co., Ltd.; Datong Tianzhao Activated Carbon Co., Ltd.; DaTong Tri-Star & Power Carbon Plant; Datong Weidu Activated Carbon Co., Ltd.; Datong Xuanyang Activated Carbon Co., Ltd; Datong Zuoyun Biyun Activated Carbon Co., Ltd.; Datong Zuoyun Fu Ping Activated Carbon Co., Ltd.; Dezhou Jiayu Activated Carbon Factory; Dongguan Baofu Activated Carbon; Dongguan SYS Hitek Co., Ltd.; Dushanzi Chemical Factory; Fu Yuan Activated Carbon Co., Ltd.; Fujian Jianyang Carbon Plant; Fujian Nanping Yuanli Activated Carbon Co., Ltd.; Fujian Yuanli Active Carbon Co., Ltd.; Fuzhou Taking Chemical; Fuzhou Yihuan Carbon; Great Bright Industrial; Hangzhou Hengxing Activated Carbon; Hangzhou Hengxing Activated Carbon Co., Ltd.; Hangzhou Linan Tianbo Material (HSLATB); Hangzhou Nature Technology; Hebei Shenglun Import & Export Group Company; Hegongye Ninxia Activated Carbon Factory; Heilongjiang Provincial Hechang Import & Export Co., Ltd.; Hongke Activated Carbon Co., Ltd.; Huaibei Environment Protection Material Plant; Huairen Huanyu Purification Material Co., Ltd.; Huairen Jinbei Chemical Co., Ltd.; Huaiyushan Activated Carbon Group; Huatai Activated Carbon; Huzhou Zhonglin Activated Carbon; Inner Mongolia Taixi Coal Chemical Industry Limited Company; Itigi Corp. Ltd.; J&D Activated Carbon Filter Co. Ltd.; Jiangle County Xinhua Activated Carbon Co., Ltd.; Jiangsu Taixing Yixin Activated Carbon Technology Co., Ltd.; Jiangxi Hanson Import Export Co.; Jiangxi Huaiyushan Activated Carbon; Jiangxi Huaiyushan Activated Carbon Group Co.; Jiangxi Huaiyushan Suntar Active Carbon Co., Ltd.; Jiangxi Jinma Carbon; Jianou Zhixing Activated Carbon; Jiaocheng Xinxin Purification Material Co., Ltd.; Jing Mao (Dongguan) Activated Carbon Co., Ltd.; Kaihua Xingda Chemical Co., Ltd.; Kemflo (Nanjing) Environmental Tech; Keyun Shipping (Tianjin) Agency Co., Ltd.; Kunshan Actview Carbon Technology Co., Ltd.; Langfang Winfield Filtration Co.; Link Shipping Limited; Longyan Wanan Activated Carbon; Mindong Lianyi Group; Nanjing Mulinsen Charcoal; Nantong Ameriasia Advanced Activated Carbon Product Co., Ltd.;

Ningxia Baota Activated Carbon Co., Ltd.; Ningxia Baota Active Carbon Plant; Ningxia Guanghua A/C Co., Ltd.; Ningxia Blue-White-Black Activated Carbon (BWB); Ningxia Fengyuan Activated Carbon Co., Ltd.; Ningxia Guanghua Activated Carbon Co., Ltd.; Ningxia Guanghua Chemical Activated Carbon Co., Ltd.; Ningxia Haoqing Activated Carbon Co., Ltd.; Ningxia Henghui Activated Carbon; Ningxia Honghua Carbon Industrial Corporation; Ningxia Huinong Xingsheng Activated Carbon Co., Ltd.; Ningxia Jirui Activated Carbon; Ningxia Lingzhou Foreign Trade Co., Ltd.; Ningxia Luyuangheng Activated Carbon Co., Ltd.; Ningxia Pingluo County Yaofu Activated Carbon Plant; Ningxia Pingluo Xuanzhong Activated Carbon Co., Ltd.; Ningxia Pingluo Yaofu Activated Carbon Factory; Ningxia Taixi Activated Carbon; Ningxia Tianfu Activated Carbon Co., Ltd.; Ninxia Tongfu Coking Co., Ltd.; Ningxia Weining Active Carbon Co., Ltd.; Ningxia Xingsheng Coal and Active Carbon Co., Ltd.; Ningxia Xingsheng Coke & Activated Carbon Co., Ltd.; Ningxia Yinchuan Lanqiya Activated Carbon Co., Ltd.; Ningxia Yirong Alloy Iron Co., Ltd.; Ningxia Zhengyuan Activated; Nuclear Ningxia Activated Carbon Co., Ltd.; OEC Logistic Qingdao Co., Ltd.; Panshan Import and Export Corporation; Pingluo Xuanzhong Activated Carbon Co., Ltd.; Pingluo Yu Yang Activated Carbon Co., Ltd.; Shanghai Activated Carbon Co., Ltd.; Shanghai Coking and Chemical Corporation; Shanghai Goldenbridge International; Shanghai Jiayu International Trading (Dezhou Jiayu and Chengde Jiayu); Shanghai Jinhu Activated Carbon (Xingan Shenxin and Jiangle Xinhua); Shanghai Light Industry and Textile Import & Export Co., Ltd.; Shanghai Mebao Activated Carbon; Shanghai Xingchang Activated Carbon; Shanxi Blue Sky Purification Material Co., Ltd.; Shanxi Carbon Industry Co., Ltd.; Shanxi Newtime Co., Ltd.; Shanxi Qixian Foreign Trade Corporation; Shanxi Qixian Hongkai Active Carbon Goods; Shanxi Supply and Marketing Cooperative; Shanxi Tianli Ruihai Enterprise Co.; Shanxi Xiaoyi Huanyu Chemicals Co., Ltd.; Shanxi Xinhua Activated Carbon Co., Ltd.; Shanxi Xinhua Chemical Co., Ltd. (formerly Shanxi Xinhua Chemical Factory); Shanxi Xinhua Protective Equipment; Shanxi Xinshidai Import Export Co., Ltd.; Shanxi Xuanzhong Chemical Industry Co., Ltd.; Shanxi Zuoyun Yunpeng Coal Chemistry; Shenzhen Sihaiweilong Technology Co.; Sincere Carbon Industrial Co. Ltd.; Sinoacarbon International Trading Co, Ltd.; Taining Jinhu Carbon; Tianchang (Tianjin) Activated Carbon; Tianjin Century Promote International Trade Co., Ltd.; Taiyuan Hengxinda Trade Co., Ltd.; Tonghua Bright Future Activated Carbon Plant; Tonghua Xinpeng Activated Carbon Factory; Triple Eagle Container Line; Uniclear New-Material Co., Ltd.; Valqua Seal Products (Shanghai) Co.; VitaPac (HK) Industrial Ltd.; Wellink Chemical Industry; Xi Li Activated Carbon Co., Ltd.; Xi'an Shuntong International Trade & Industrials Co., Ltd.; Xiamen All Carbon Corporation; Xingan County Shenxin Activated Carbon Factory; Xinhua Chemical Company Ltd.; Xuanzhong Chemical Industry; Yangyuan Hengchang Active Carbon; Yicheng Logistics Yinchuan Lanqiya Activated Carbon Co., Ltd.; Zhejiang Quizhou Zhongsen Carbon; Zhejiang Xingda Activated Carbon Co., Ltd.; Zhejiang Yun He Tang Co., Ltd.; Zhuxi Activated Carbon; and, Zuoyun Bright Future Activated Carbon Plant.[1]

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The aforementioned requests for review were withdrawn within the 90-day period. Because the requests for review were timely withdrawn and because no other party requested a review of the aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are partially rescinding this review with respect to these companies.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. *See* 19 CFR 351.212(b)(1). For those companies for which this review has been rescinded and which have a separate rate from a prior segment of this proceeding, 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, in accordance with 19 CFR 351.212(c)(2). Accordingly, the Department intends to issue assessment instructions, based on separate rates assigned in prior segments of the proceeding, to CBP 15 days after publication of this notice for the following companies: Datong Locomotive Coal & Chemicals Co., Ltd.; Ningxia Lingzhou Foreign Trade Co., Ltd.; Shanxi Qixian Foreign Trade Corporation; Shanxi Xuanzhong Chemical Industry Co., Ltd.; and Xi'an Shuntong International Trade & Industrials Co., Ltd.

For those companies not assigned a separate rate from a prior segment of the proceeding, the Department has stated that they belong to the PRC-wide entity and that the administrative review will continue for these companies. *See Initiation Notice*. The Department intends to issue liquidation instructions for the PRC-wide entity 15 days after publication of the final results of this review.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, 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 section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–24145 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] Petitioners also withdrew their request for review of United Manufacturing International (Beijing) Ltd. (''UMI''). However, UMI has submitted a request on its behalf for an administrative review in the current proceeding. *See,* Letter from UMI, dated April 21, 2011.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission, In Part, of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

Background

On July 1, 2011, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip from India covering the period January 1, 2010, through December 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609, 38610 (July 1, 2011). The Department received a timely request for a CVD administrative review from Petitioners [1] for five companies: Ester Industries Limited, Garware Polyester Ltd., Jindal Poly Films Limited of India, Polyplex Corporation Ltd., and SRF Limited. The Department also received timely requests for a CVD review from Vacmet India Ltd. (Vacmet) and Polypacks Industries of India (Polypacks). On August 26, 2011, the Department published a notice of initiation of administrative review with respect to Ester Industries Limited, Garware Polyester Ltd., Jindal Poly Films Limited of India, Polyplex Corporation Ltd., SRF Limited, Vacmet and Polypacks. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011). On August 23, 2011, Vacmet and Polypacks withdrew their requests for a CVD administrative review.

[1] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc.

Rescission, In Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Vacmet's and Polypacks's requests were submitted within the 90-day period and, thus, are timely. Because Vacmet's and Polypacks's withdrawals of request for a CVD review are timely and because no other party requested a review of Vacmet and Polypacks, in accordance with 19 CFR 351.213(d)(1), we are rescinding this CVD review with respect to Vacmet and Polypacks.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Vacmet and Polypacks shall be assessed countervailing duties at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, 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 section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 14, 2011.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–24147 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; NIST Three-Year Generic Request for Customer Service-Related Data Collections

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), 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 November 21, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the collection instruments and instructions should be directed to Darla Yonder, Management Analyst, NIST, (301) 975–4064 or via e-mail to *darla.yonder@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys, both quantitative and qualitative. The surveys will be designed to determine the type and quality of the products, services, and information our key customers want and expect, as well as their satisfaction with and awareness of existing products, services, and information. In addition, NIST proposes other customer service satisfaction data collections that include, but may not be limited to focus groups, reply cards that accompany product distributions, and Web-based surveys and dialog boxes that offer customers the opportunity to express their level of satisfaction with NIST products, services, and information and for ongoing dialogue with NIST. NIST will limit its inquiries to data collections that solicit strictly

voluntary options and will not collect information that is required or regulated. No assurances of confidentiality will be given. However, it will be completely optional for survey participants to provide their name or affiliation information if they wish to provide comments for which they elect to receive a response.

II. Method of Collection

NIST will collect this information by electronic means, as well as by mail, fax, telephone, and person-to-person interaction.

III. Data

OMB Control Number: 0693–0031.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or for-profit organizations, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Time per Response: Less than 2 minutes for a response card, 2 hours for focus group participation. The average estimated response time is expected to be less than 30 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 14, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24049 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA668

Notice of Availability of Proposed Low Effect Habitat Conservation Plan for Tumalo Irrigation District's Tumalo Conservation Project

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

ACTION: Notice of availability; receipt of application.

SUMMARY: NMFS advises interested parties of Tumalo Irrigation District's (TID) application for an incidental take permit, pursuant to the Endangered Species Act of 1973, (ESA). The requested 50-year permit would authorize the incidental take of Middle Columbia River Steelhead in the Deschutes River basin that may occur from irrigation activities and construction of water conservation projects implemented by TID. NMFS is requesting comments on the permit application and on Tumalo Irrigation District's low effect Habitat Conservation Plan (HCP). The application and HCP are available for public review.

DATES: Written comments must be received no later than 5 p.m. Pacific Standard Time on October 20, 2011.

ADDRESSES: All comments concerning the proposed issuance of an incidental take permit and the HCP should be addressed to: Scott Carlon, National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232, facsimile number 503–231–2318. Comments may be submitted by e-mail to the following address: *TumaloHCP.nwr@noaa.gov.* In the subject line of the e-mail, include the document identifier: Tumalo Irrigation District HCP.

FOR FURTHER INFORMATION CONTACT: Scott Carlon, NMFS (503) 231–2379.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals seeking copies of the proposed HCP should contact NMFS by telephone (see **FOR FURTHER INFORMATION CONTACT**) or by letter (see **ADDRESSES**). Copies of the subject documents also are available for public inspection during regular business hours at NMFS' Hydropower Division Office (see **ADDRESSES**) and are available at the following Web site: *http://www.nwr.noaa.gov.*

Statutory Authority

Section 9 of the ESA prohibits the taking of any listed species. The definition of ''take'' under the ESA (16 U.S.C. 1532(19)) includes to harass, harm, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. NMFS' definition of ''harm'' includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

Section 10 of the ESA and implementing regulations specify requirements for the issuance of incidental take permits (ITP) to non-Federal entities for the incidental take of endangered and threatened species. NMFS's regulations governing permits for incidental taking of threatened and endangered species are at 50 CFR 222.307. Any proposed take must be incidental to otherwise lawful activities, not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and minimize and mitigate the impacts of such take to the maximum extent practicable. In addition, the applicant must prepare and submit an HCP describing the impact that will likely result from such taking, the conservation measures to minimize and mitigate the take, the funding available to implement such steps, alternatives to such taking, and the reason such alternatives are not being implemented.

Background

The Tumalo Irrigation District (TID) is an 8,200-acre irrigation project located northwest of Bend in Deschutes County, Oregon. TID is seeking a permit from NMFS for the incidental take of ESA-listed Middle Columbia River (MCR) steelhead (*Oncorhynchus mykiss*) that are being reintroduced into historic habitat downstream of TID. The ITP would provide ESA regulatory certainty for TID's existing operations and proposed water conservation projects providing that TID meets the permit conditions. Existing operations included in the HCP as covered activities include the diversion of flow from Tumalo Creek and the Deschutes River, maintenance activities associated with diversion structures and conveyance systems, and water conservation projects including piping portions of the irrigation canals.

TID has a total water right of 211.25 cubic feet per second (cfs) and diverts water from two locations: Tumalo Creek

at river mile 3 (river km 4.8) and the Deschutes River at river mile 165 (river km 265.5). TID's water rights consist of 201.75 cfs from Tumalo Creek and 9.5 cfs of natural flow from the Deschutes River. TID also has rights to stored water in Crescent Lake Reservoir. The irrigation season usually runs from April through October. Peak diversions normally reach about 190 cfs during the months of May, June and July but begin to decrease in late July. Flow diverted from Tumalo Creek is conveyed via the Tumalo Feed Canal. Diversion rates from Tumalo Creek range between 40 and 70 cfs in April and increase steadily through May with peak diversion between 130 and 150 cfs during the months of May and June, diminishing to about 50 cfs by September.

Flow diverted by TID from the Deschutes River is conveyed via the Bend Feed Canal. Diversion rates are at or near 10 cfs in April and gradually increase May through July. Starting in about mid-July and running through September, the majority of TID diversions (about 60 percent) are taken from the Deschutes River, reaching roughly 120 cfs. During the off-season (November through March), diversions into TID are eliminated except for occasional stock runs of about 50 to 60 cfs to fill stock ponds.

TID conducts all maintenance activities during the off-season with the exception of year round removal of debris and the need for emergency repairs. Maintenance actions include repair and improvements to diversion structures and canals, occasional (every few years) dredging behind diversion dams, removing vegetation from canals and ditches, and inspection of flow measurement instrumentation. Both the Tumalo Creek and Deschutes River diversions are fitted with fish screens, so all maintenance on these structures occur during the off-season.

TID has installed pipe in a portion of the Tumalo Feed Canal and proposes to complete piping the remaining open sections (about 6 miles (9.65 km) of canal) by October 31, 2015. Once completed, TID estimates that approximately 20 cfs of water will be conserved that is now lost through evaporation and seepage. Upon completion of piping, the conserved water will be transferred to the State of Oregon for permanent instream water use in the form of senior water rights. This will increase flow in Tumalo Creek and the Deschutes River below Tumalo Creek by about 11.8 cfs during the irrigation season and is expected to cool water in the Deschutes by roughly 1 degree Fahrenheit (0.56 degrees C). The remaining 8.2 cfs will be in the form of stored water rights in Crescent Lake Reservoir and will be used by the State of Oregon to supplement flows in Crescent Creek and the Deschutes River.

To improve monitoring of its diversion rates, TID will replace an existing flow and temperature measurement structure located in Tumalo Creek downstream of the Tumalo Feed Canal diversion. The existing structure does not give accurate measurements when flows are high. TID will also install a meter in the Tumalo Feed Canal downstream of its confluence with the Bend Feed Canal to measure the combined diversion rate. TID will submit yearly progress reports to NMFS and the Oregon Department of Fish and Wildlife.

Historically, MCR steelhead did not occur in Tumalo Creek or the reach of the Deschutes River where TID diverts water. The upstream limit for anadromous fish, including MCR steelhead, in the Deschutes River was Big Falls at about river mile 132 (river km 212.4). Tumalo Creek enters the Deschutes River roughly 28 river miles (45.1 km) upstream of Big Falls and the Deschutes River diversion is about 33 river miles (53.1 km) above Big Falls. MCR steelhead are not being reintroduced above this natural barrier.

NMFS may approve the HCP as a low effect HCP, as provided in the Habitat Conservation Planning Handbook (NMFS and USFWS 1996). Determination of low effect HCPs is based upon the plan having: Minor or negligible effects on Federally-listed, proposed, or candidate species and their habitats; minor or negligible effects on other environmental values or resources; and, impacts that considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to the environmental values or resources which would be considered significant. If the plan qualifies as a low-effect HCP, the NEPA consideration would be covered by a categorical exclusion, and NMFS would not need to conduct further analysis.

Request for Comments

If you wish to comment on the permit application or the HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. We will evaluate this permit application, associated documents, and comments submitted to determine whether to issue the permit. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

If we determine that the legal criteria are met, we will issue an incidental take permit under section 10(a)(1)(B) of the ESA to the TID for take of the proposed covered species, incidental to otherwise lawful activities in accordance with the terms of the permit. We will not make our final decision until after the end of the 30-day comment period, and will fully consider all comments received during the comment period. NMFS provides this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: September 15, 2011.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24105 Filed 9–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 20, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 15, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Postsecondardy Education

Type of Review: Reinstatement.

Title of Collection: Robert C. Byrd Honors Scholarship Program Final Performance Report.

OMB Control Number: 1840–0598.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 57.

Total Estimated Annual Burden Hours: 570.

Abstract: The information collected in the Final Performance Report ensures that State Education Agencies (SEA) are making schoarships available in accordances with the legislations and regulations that govern the Robert C. Byrd Honors scholarship Program. The Department will use the information to monitor and evaluate the compliance of SEAs.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4642. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–24131 Filed 9–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), 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 and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 21, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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.

Dated: September 15, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Impact Evaluation of Race to the Top and School Improvement Grants.

OMB Control Number: 1850–0884.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 1,529.

Total Estimated Annual Burden Hours: 2,459.

Abstract: This OMB package requests clearance for data collection, analysis, and reporting activities from 50 states and the District of Columbia, and approximately 134 districts and 1,200 schools as part of an evaluation of Race to the Top (RTT) and School Improvement Grants (SIG). The American Recovery and Reinvestment Act contained substantial funding for systemic education reform. This included $4 billion in RTT grants, which were awarded to 11 states and the District of Columbia based both on their education reform plans and their past success in creating the conditions for reform, and $3 billion in additional funding for SIG, which is aimed at implementing one of four school turnaround models (STMs) in the lowest-performing schools. The evaluation is designed to (1) study the implementation of RTT and SIG; (2) analyze the impact of SIG- or RTT-funded STMs on student outcomes

using a regression discontinuity design; (3) analyze the relationship between receipt of RTT funds and student outcomes using an interrupted time series design; and (4) investigate the relationship between STM turnaround models (and strategies within those models) and student outcomes in low-performing schools. This Office of Management and Budget package follows a previously approved package for recruitment activities (#1850–0884), and includes data collection forms, and burden estimates of the number of respondents and hours of response time.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4718. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–24137 Filed 9–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Statewide, Longitudinal Data Systems Program

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

Overview Information: Statewide, Longitudinal Data Systems Program. Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.372A.

DATES: *Request for Applications (RFA) Available:* September 15, 2011.

Application Package Available: September 26, 2011.

Deadline for Transmittal of Applications: December 15, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Statewide, Longitudinal Data Systems program awards grants to State educational agencies (SEAs) to design, develop, and implement statewide, longitudinal data systems to efficiently and accurately manage, analyze, disaggregate, and use individual student data. The Department's long-term goal in operating the program is to help all States create comprehensive P–20W (early learning through workforce) systems that foster the generation and use of accurate and timely data, support analysis and informed decision-making at all levels of the education system, increase the efficiency with which data may be analyzed to support the continuous improvement of education services and outcomes, facilitate research to improve student academic achievement and close achievement gaps, support education accountability systems, and simplify the processes used by SEAs to make education data transparent through Federal and public reporting.

Priorities

SEAs may apply for grants under one of three priorities:

(1) To design, develop, and implement statewide, longitudinal kindergarten through grade 12 (K–12) data systems;

(2) To develop and link early childhood data to the State's K–12 data system; or

(3) To develop and link postsecondary and/or workforce data to the State's K–12 data system.

Grants will not be made available to support ongoing maintenance of data systems.

An SEA may submit only one application under this competition.

Program Authority: 20 U.S.C. 9607.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 77, 80, 81, 82, 84, 85, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, and 75.230.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: The Administration has requested $100,000,000 for this program in FY 2012. Although Congress has not enacted a final appropriation for FY 2012, the Institute of Education Sciences (Institute or IES) is inviting applications for this competition now so that it may be prepared to make awards following final action on the Department's appropriations bill. The actual award of grants will depend on the availability of funds.

Estimated Average Size of Awards: $1,000,000 to $5,000,000 for the entire project period.

Maximum Award: We will reject any application that proposes a budget exceeding the following amounts for a project period of 36 months:

For grants to design, develop, and implement a K–12 statewide, longitudinal data system (Priority 1), $5,000,000.

For grants to develop and link early childhood data to the State's K–12 data system (Priority 2) or to develop and link postsecondary and/or workforce data to the State's K–12 data system (Priority 3), $4,000,000.

The Director of the Institute may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: The number of awards made under this competition will depend upon the quality of the applications received and the level of funding available.

Note: The Department is not bound by any estimates in this notice.

Project Period: Three years.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are limited to SEAs. An SEA is the agency primarily responsible for the State supervision of elementary schools and secondary schools. See 20 U.S.C. 9601 (which incorporates by reference the definition of SEA set out in section 9101 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7801). The SEAs of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are eligible.

SEAs that received SLDS grants in June 2010 from funds appropriated under the American Recovery and Reinvestment Act of 2009 (ARRA) will not be considered for 2012 SLDS grants under this competition. Their ARRA SLDS grants, awarded in FY 2010, will still be underway when the 2012 grants are awarded.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* A supplement-not-supplant requirement applies to this program. Funds made available under this grant program are to supplement, and not supplant, other State or local funds used for developing

or improving State data systems. The grants are expected to assist SEAs in their efforts to design, develop, and implement statewide, longitudinal data systems, but not to supplant State and local funds. That is, the Institute expects grant funding to augment existing State and local funds devoted to this effort.

IV. Application and Submission Information

1. *RFA and Other Information:* Information regarding program and application requirements for this competition will be contained in the IES RFA package, which will be available on September 15, 2011, at the following Web site: *http://ies.ed.gov/funding/.*

2. *Application Package:* The application package with forms and instructions for applying to this competition will be available no later than September 26, 2011, at *http://www.Grants.gov* (see section IV. 5. Other Submission Requirements of this notice).

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

3. *Submission Dates and Times:*

Request for Applications (RFA) Available: September 15, 2011.

Application Package Available: September 26, 2011.

Deadline for Transmittal of Applications: December 15, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 5. Other Submission Requirements of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *http://www.grants.gov/applicants/get_registered.jsp.*

5. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Statewide, Longitudinal Data Systems competition, CFDA Number 84.372A, must be submitted electronically using the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Statewide, Longitudinal Data Systems competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.372, not 84.372A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Ellie McCutcheon, U.S. Department of Education, 555 New Jersey Avenue, NW., room 600e, Washington, DC 20208–5530. FAX: (202) 219–1466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number: 84.372A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following

address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number: 84.372A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* Information regarding selection criteria and review procedures for this competition will be provided in the RFA package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of this program, the Institute will determine at the end of each grant whether the SEA has in operation a statewide, longitudinal data system that meets the conditions of the grant. Grantees will be expected to report in annual and final reports on the status of their development and implementation of these systems.

5. *Grant Administration:* Applicants should budget for a two-day meeting for project directors to be held in Washington, DC.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Tate Gould, U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW., room 9023, Washington, DC 20006–5651. Telephone: (202) 219–7080 or by e-mail: *Tate.Gould@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package 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** in section VII of this notice.

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: *http://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: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 15, 2011.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2011–24151 Filed 9–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–543–000, ANR Pipeline Company; Docket No. CP11–544–000, TC Offshore LLC]

Notice of Application for Abandonment by Sale and Notice of Application for Certificate of Public Convenience and Necessity

Take notice that on September 1, 2011, ANR Pipeline Company (ANR), an indirect wholly-owned subsidiary of

TransCanada Corporation, 717 Texas Street, Houston, Texas 77002–2761, filed with the Federal Energy Regulatory Commission (Commission) an application in Docket No. CP11–543–000 under Section 7(b) of the *Natural Gas Act* (NGA) for permission and approval to abandon by sale to TC Offshore LLC (TCO) certain onshore facilities located in Louisiana and Texas, and certain offshore supply facilities located in State and Federal waters offshore Louisiana and Texas in the Gulf of Mexico. Also take notice that on September 1, 2011, TCO, a wholly-owned subsidiary of ANR, 717 Texas Street, Suite 2400, Houston, Texas 77002–2761, filed with the Commission an abbreviated application in Docket No. CP11–544–000 under Section 7(c) of the NGA requesting authorization for TCO to acquire, own and operate those natural gas pipeline facilities proposed by ANR to be abandoned by sale, as well as blanket certificates issued to TCO under Subpart F of Part 157 and Subpart G of Part 284 of the Commission's regulations, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Specifically, ANR proposes in Docket No. CP11–543–000 to abandon by sale to TCO various facilities consisting of approximately 535 miles of pipeline, seven offshore platforms, measurement, compression, separation and dehydration facilities, and appurtenances, as well as its interests in several partially owned offshore facilities. TCO seeks in Docket No. CP11–544–000 a certificate of public convenience and necessity pursuant to NGA Section 7 authorizing TCO to acquire, own and operate those natural gas pipeline facilities proposed for abandonment by ANR in Docket No. CP11–543–000; a blanket construction certificate pursuant to Subpart F of Part 157 of the Commission's regulations, authorizing certain routine construction, operation and abandonment activities; and a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations authorizing TCO to provide open access transportation service on behalf of others pursuant to the services, tariff provisions and initial recourse rates proposed and detailed in the application.

Any questions regarding the ANR application in Docket No. CP11–543–000 should be directed to Rene Staeb, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 717 Texas Street, Houston, Texas 77002–2761, phone (832) 320–5215 or FAX (832) 320–6215 or *Rene_Staeb@transcanada.com.*

Any questions regarding the TCO application in Docket No. CP11–544–000 may be directed to Richard Parke, Manager, Certificates, TC Offshore LLC, 717 Texas Street, Suite 2400, Houston, Texas, 77002–2761, phone (832) 320–5516, e-mail: *Richard_parke@transcanada.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit an original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE,, Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: October 4, 2011.

Dated: September 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24022 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13124–003]

Notice of Application Tendered for Filing With the Commission; Copper Valley Electric Association, Inc.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* P–13124–003.

c. *Date filed:* August 30, 2011.

d. *Applicant:* Copper Valley Electric Association, Inc..

e. *Name of Project:* Allison Creek Hydroelectric Project.

f. *Location:* On Allison Creek, near the Town of Valdez, Alaska.

g. *Filed Pursuant to: Federal Power Act* 16 U.S.C. 791 (a)—825(r) .

h. *Applicant Contact:* Robert A. Wilkinson, CEO, Copper Valley Electric Association, Inc., P.O. Box 45, Mile 187 Glenn Highway Glennallen, AK 99588, (907) 822–3211.

i. *FERC Contact:* Kim A. Nguyen, *kim.nguyen@ferc.gov,* (202) 502–6105.

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. *Deadline for cooperating agency status:* October 31, 2011.

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 *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.

l. The application is not ready for environmental analysis (EA) at this time.

m. *The Allison Creek Project consists of:* (1) A 16-foot-high, 95-foot-wide concrete gravity diversion structure spanning Allison Creek with a 50-foot-wide spillway section; (2) a screen intake; (3) a 42-inch-diameter, 500-foot-long buried and 7,200-foot-long surface steel penstock; (4) a 65 foot x 65 foot powerhouse with one 6.5-megawatt turbine/generating unit; (5) a permanent 550-foot-long access road to the powerhouse; (6) a 3.8-mile-long, 34.5-kilovolt transmission line connecting to the Copper Valley switching station near the Petro Star facility along Dayville Road; and (7) appurtenant facilities. The average annual generation is estimated to be 23.3 gigawatt-hours.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the Alaska State Historic Preservation Officer (SHPO), as required by 106, *National Historic Preservation Act,* and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

p. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Tendering Notice: September 2011.

Issue Notice of Acceptance and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions: October 2011.

Issue Draft EA: August 2012.

Comments on Draft EA: September 2012.

Issue Final EA: December 2012.

Dated: September 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24020 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–117–000.

Applicants: Central Vermont Public Service Corporation, Gaz Metro Limited Partnership, Northern New England Energy Corporation, Green Mountain Power Corporation.

Description: Section 203 Application of Central Vermont Public Service Corporation and Gaz Metro, *et al.* for Authorization for Purchase, Disposition and Merger of Jurisdictional Facilities.

Filed Date: 09/09/2011.

Accession Number: 20110909–5279.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 8, 2011.

Docket Numbers: EC11–118–000.

Applicants: Amsterdam Generating Company, LLC, ESI Energy, LLC, Blythe Energy, LLC, Calhoun Power Company I, LLC, Doswell Limited Partnership.

Description: Amsterdam Generating Company, LLC, *et al.* joint application for approval under section 203 of the Federal Power Act, request for shortened comment period, and request for expedited treatment.

Filed Date: 09/09/2011.

Accession Number: 20110909–5285.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3576–003; ER97–3583–007; ER11–3401–004; ER10–3138–003.

Applicants: Golden Spread Electric Cooperative, Inc., GS ELECTRIC GENERATING COOPERATIVE INC, Denver City Energy Associates, L.P., Golden Spread Panhandle Wind Ranch, LLC.

Description: Notice of Change in Status of Golden Spread Electric Cooperative, Inc. *et al.*

Filed Date: 09/12/2011.

Accession Number: 20110912–5118.

Comment Date: 5 p.m. Eastern Time on Monday, October 3, 2011.

Docket Numbers: ER11–4498–000.

Applicants: Smoky Hills Wind Farm, LLC.

Description: Smoky Hills Wind Farm, LLC submits tariff filing per 35.1: Smoky Hills Wind Farm, LLC MBR Tariff to be effective 10/31/2007.

Filed Date: 09/12/2011.

Accession Number: 20110912–5000.

Comment Date: 5 p.m. Eastern Time on Monday, October 3, 2011.

Docket Numbers: ER11–4499–000.

Applicants: Smoky Hills Wind Project II, LLC.

Description: Smoky Hills Wind Project II, LLC submits tariff filing per 35.1: Smoky Hills Wind Project II, LLC MBR Tariff to be effective 10/20/2008.

Filed Date: 09/12/2011.

Accession Number: 20110912–5001.

Comment Date: 5 p.m. Eastern Time on Monday, October 3, 2011.

Docket Numbers: ER11–4500–000.

Applicants: Enel Stillwater, LLC.

Description: Enel Stillwater, LLC submits tariff filing per 35.1: Enel Stillwater, LLC MBR Tariff to be effective 12/5/2008.

Filed Date: 09/12/2011.

Accession Number: 20110912–5002.

Comment Date: 5 p.m. Eastern Time on Monday, October 3, 2011.

Docket Numbers: ER11–4501–000.

Applicants: Caney River Wind Project, LLC.

Description: Caney River Wind Project, LLC submits tariff filing per 35.12: Caney River Wind Project, LLC MBR Tariff to be effective 10/1/2011.

Filed Date: 09/12/2011.

Accession Number: 20110912–5003.

Comment Date: 5 p.m. Eastern Time on Monday, October 3, 2011.

Docket Numbers: ER11–4502–000.

Applicants: HEEP Fund Inc.

Description: HEEP Fund Inc submits notice of cancellation to its FERC Electric Tariff, Original Volume No 1, effective 10/30/11.

Filed Date: 09/09/2011.

Accession Number: 20110912–0201.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4503–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notices of Cancellation of PJM Interconnection, L.L.C. for First Revised Service Agreement No. 2020 and Original Service Agreement No. 2021.

Filed Date: 09/09/2011.

Accession Number: 20110909–5293.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–2–000.

Applicants: The Detroit Edison Company, DTE Energy Trading, Inc., DTE River Rouge No. 1, L.L.C., DTE East China, LLC, DTE Pontiac North, LLC, DTE Stoneman, LLC, DTE Energy Supply, Inc., Woodland Biomass Power Ltd.

Description: Amended Quarterly Report Pursuant to 18 CFR sec. 35.42(d) for the Second Quarter of 2011 of The Detroit Edison Company, *et al.*

Filed Date: 09/09/2011.

Accession Number: 20110909–5287.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD11–11–000.

Applicants: Western Electricity Coordinating Council.

Description: Western Electricity Coordinating Council Compliance Filing in response to Order Numbers 751 and 752 on Version One Regional Reliability Standards.

Filed Date: 06/20/2011.

Accession Number: 20110620–5190.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 12, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24033 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4303–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.17(b): NYISO Errata to 8/12/11 Voltage Support Service Filing to be effective 10/11/2011.

Filed Date: 09/13/2011.

Accession Number: 20110913–5041.

Comment Date: 5 p.m. Eastern Time on Friday, September 23, 2011.

Docket Numbers: ER11–4508–000.

Applicants: Centre Lane Trading Ltd.

Description: Centre Lane Trading Ltd. submits tariff filing per 35.1: Baseline Tariff to be effective 9/8/2011.

Filed Date: 09/13/2011.

Accession Number: 20110913–5040.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

Docket Numbers: ER11–4509–000.

Applicants: One Nation Energy Solutions, LLC.

Description: One Nation Energy Solutions, LLC submits tariff filing per 35.1: Market Based Rate Re-File to be effective 9/13/2011.

Filed Date: 09/13/2011.

Accession Number: 20110913–5074.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 04, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24054 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–2494–016; ER03–179–012; ER01–838–012; ER10–256–003; ER03–1025–008; ER07–1157–008; ER09–1297–004; ER07–875–007; ER09–832–011.

Applicants: ESI Vansycle Partners, L.P., FPL Energy New Mexico Wind, LLC, FPL Energy Stateline II, Inc., FPL Energy Vansycle, L.L.C., FPL Energy Wyoming, LLC, Logan Wind Energy LLC, Northern Colorado Wind Energy, LLC, Peetz Table Energy, LLC, NextEtra Energy Power Marketing, LLC.

Description: NextEra Companies Clarification Regarding the Northwest Triennial Market Power Update.

Filed Date: 09/06/2011.

Accession Number: 20110906–5175.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 27, 2011.

Docket Numbers: ER11–3312–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35: Compliance Filing re: Data Sharing Framework to be effective 6/5/2011.

Filed Date: 09/12/2011.

Accession Number: 20110912–5117.

Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: ER11–3650–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Second Amendment to 607R13 Westar Energy, Inc. NITSA NOA to be effective 5/1/2011.

Filed Date: 09/12/2011.

Accession Number: 20110912–5178.

Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: ER11–4339–001.

Applicants: ENBALA Power Networks (USA), Inc.

Description: ENBALA Power Networks (USA), Inc. submits tariff

filing per 35.17(b): Amended ENBALA Power Networks (USA) Inc. MBR to be effective 11/1/2011.

Filed Date: 09/12/2011.

Accession Number: 20110912–5219.

Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: ER11–4504–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits its Average System Cost filing for sales of electric power to the Bonneville Power Administration pursuant to Part 35 of the Commission's regulations.

Filed Date: 09/12/2011.

Accession Number: 20110912–0202.

Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: ER11–4505–000.

Applicants: Backyard Farms Energy LLC.

Description: Backyard Farms Energy LLC submits tariff filing per 35.1: Baseline to be effective 9/12/2011.

Filed Date: 09/12/2011.

Accession Number: 20110912–5199.

Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: ER11–4506–000.

Applicants: Devonshire Energy LLC.

Description: Devonshire Energy LLC submits tariff filing per 35.1: Baseline to be effective 9/12/2011.

Filed Date: 09/12/2011.

Accession Number: 20110912–5213.

Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Docket Numbers: ER11–4507–000.

Applicants: Canastota Windpower, LLC.

Description: Canastota Windpower, LLC submits tariff filing per 35.1: Canastota Windpower, LLC MBR Tariff to be effective 10/20/2001.

Filed Date: 09/12/2011.

Accession Number: 20110912–5220.

Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH11–20–000.

Applicants: GGCP, Inc.

Description: FERC–65A Exemption Notification of Status as Passive Investors of GGCP, Inc.

Filed Date: 09/12/2011.

Accession Number: 20110912–5222.

Comment Date: 5 p.m. Eastern Time on Monday, October 03, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24053 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2908–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 09–09–11 Supplemental Reserves Compliance to be effective 4/19/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5144.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–3846–001.

Applicants: El Paso Electric Company.

Description: El Paso Electric Company submits tariff filing per 35: Compliance Refiling of Rate Schedule No. 106 to be effective 6/21/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5211.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4109–001.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits tariff filing per 35.17(b): Revised Service Agreement No. 143 under Florida Power Corporation OATT to be effective 5/18/2011.

Filed Date: 09/08/2011.

Accession Number: 20110908–5090.

Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4111–001.

Applicants: Hudson Ranch Power I LLC.

Description: Hudson Ranch Power I LLC submits tariff filing per 35.17(b): Amended Application for Market-Based Rate Authority to be effective 12/1/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5210.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4148–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Amendment to 1636R3 Kansas Electric Power Cooperative, Inc. NITSA NOA to be effective 6/1/2011.

Filed Date: 09/08/2011.

Accession Number: 20110908–5064.

Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4172–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Amendment to 1636R4 Kansas Electric Power Cooperative, Inc. to be effective 7/1/2011.

Filed Date: 09/08/2011.

Accession Number: 20110908–5062.

Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4180–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Amendment to 2166 Westar Energy Inc. NITSA NOA to be effective 7/1/2011.

Filed Date: 09/08/2011.

Accession Number: 20110908–5063.

Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4272–001.

Applicants: ITC Midwest LLC.

Description: ITC Midwest LLC submits tariff filing per 35.17(b): Amendment to Filing to be effective 10/10/2011.

Filed Date: 09/08/2011.

Accession Number: 20110908–5140.

Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4291–001.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits tariff filing per 35.17(b): 09_09_11 KU ARAs Errata to be effective 8/15/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5102.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4462–001.

Applicants: NEPM II, LLC.

Description: NEPM II, LLC submits tariff filing per 35.17(b): Errata to NEPM II, LLC's MBR Tariff Application to be effective 11/1/2011.

Filed Date: 09/08/2011.

Accession Number: 20110908–5170.

Comment Date: 5 p.m. Eastern Time on Thursday, September 29, 2011.

Docket Numbers: ER11–4488–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Service Agreement No. 3044 among PJM, EMMT, ExGen and ComEd to be effective 8/10/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5113.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4489–000.

Applicants: ICC Energy Corporation.

Description: ICC Energy Corporation submits tariff filing per 35.12: ICC Energy Corporation Market-Based Rate Application to be effective 9/9/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5114.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4489–000.

Applicants: ICC Energy Corporation.

Description: ICC Energy Corporation submits tariff filing per: Supplement Filing to Include Asset Table to be effective N/A.

Filed Date: 09/09/2011.

Accession Number: 20110909–5134.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4490–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: Brigham City Interconnection Agreement to be effective 11/9/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5115.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4491–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Wolverine Power Supply Cooperative, Inc. submits tariff filing per 35.13(a)(2)(iii: Wholesale Power Contract with Midwest Energy Cooperative to be effective 11/9/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5133.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4492–000.

Applicants: PacifiCorp.

Description: PacifiCorp's cancellation of Rate Schedule FERC No. 341, Substation Operating Agreement between PacifiCorp and Brigham City.

Filed Date: 09/09/2011.

Accession Number: 20110909–5160.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4493–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Service Agreement Nos. 3045 and 3046–ISA & ICSA among PJM, VEPCO & Dominion to be effective 8/10/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5164.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4494–000.

Applicants: International Transmission Company, Midwest Independent Transmission System Operator, Inc.

Description: International Transmission Company submits tariff filing per 35.13(a)(2)(iii: Cancellation ITC Early Energy to be effective 9/9/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5187.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4495–000.

Applicants: International Transmission Company, Midwest Independent Transmission System Operator, Inc.

Description: International Transmission Company submits tariff filing per 35.13(a)(2)(iii: Cancellation of ITC-Harvest Trial Op to be effective 9/9/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5190.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4496–000.

Applicants: International Transmission Company, Midwest Independent Transmission System Operator, Inc.

Description: International Transmission Company submits tariff filing per 35.13(a)(2)(iii: Cancellation ITC-Harvest E&P to be effective 9/9/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5196.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

Docket Numbers: ER11–4497–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: E&P Agreement for PG&E's Guernsey Solar Station to be effective 9/12/2011.

Filed Date: 09/09/2011.

Accession Number: 20110909–5212.

Comment Date: 5 p.m. Eastern Time on Friday, September 30, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24032 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2615–037]

FPL Energy Maine Hydro LLC; Madison Paper Industries; Merimil Limited Partnership; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the 4.18-megawatt Brassua Hydroelectric Project, located on the Moose River, in Somerset County, Maine, and has prepared a final Environmental Assessment (FEA) for the project.

The FEA contains staff's analysis of the potential environmental effects of continued operation of the project and concludes that continued operation, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public

Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Steve Kartalia at (202) 502–6131.

Dated: September 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24092 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–22–000, Sunoco Pipeline L.P.]

Notice of Petition For Declaratory Order

Take notice that on September 2, 2011, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2011), Sunoco Pipeline L.P. (SPLP) tendered for filing a petition for a declaratory order requesting that the Commission issue an order approving (1) Priority service for the proposed Mariner West ethane pipeline and (2) the overall tariff and rate structure for the Mariner West Project.

Any person desiring to intervene or to protest in the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Standard Time on Tuesday, September 27, 2011.

Dated: September 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24023 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14258–000]

American River Power I, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 22, 2011, American River Power I, LLC (American River) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of the proposed Luke Chute, Ohio—Water Power No. 14258 to be located at the existing Luke Chute Lock and Dam on the Muskingum River, in the town of Beckett, in Washington County, Ohio. The Luke Chute Lock and Dam is owned by the State of Ohio. There are no federal lands associated with the project.

The proposed project would consist of: (1) The existing Luke Chute Dam and reservoir; (2) a new 30-foot by 40-foot powerhouse housing controls, switchgear, and related equipment; (3) new intake structure and trash rack containing five 150-foot-long bays and ten vertical slide gates; (4) a new 200-foot-long by 120-foot-wide power canal; (5) three new 927-kilowatt and two new 632-kilowatt turbine-generator units with a combined capacity of 3.9 megawatts; (6) a new 150-foot-long by 120 to 200-foot-wide tailrace; (7) a new 1,500-foot-long, 12.5 to 34.5-kilovolt transmission line; and (8) appurtenant facilities. The project would have an estimated annual generation of 15,600 gigawatt-hours.

Applicant Contact: Mr. John P. Henry, 726 Eldridge Avenue, Collingswood, NJ 08107–1708, (856) 240–0707.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

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 the Commission's Web site at *http://www.ferc.gov/docs-filing/*

elibrary.asp. Enter the docket number (P–1258–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24018 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14257–000]

American River Power I, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 22, 2011, American River Power I, LLC (American River) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of the proposed Ellis, Ohio—Water Power Project No. 14257 to be located at the existing Ellis Ohio Lock Dam No. 11 on the Muskingum River, near the township of Ellis, in Muskingum County, Ohio. The Ellis Ohio Lock Dam No. 11 is owned by the State of Ohio. There are no federal lands associated with the project.

The proposed project would consist of: (1) The existing Ellis Dam and reservoir; (2) a new 30-foot by 40-foot powerhouse housing controls, switchgear, and related equipment; (3) new intake structure and trash rack containing four 140-foot-long bays and eight vertical slide gates; (4) a new 40-foot-long by 100-foot-wide power canal with two 50-foot-wide by 40-foot-long bays; (5) four new 625-kilowatt turbine-generator units with a combined capacity of 2.5 megawatts; (6) a new 200-foot-long by 100 to 150-foot wide tailrace; (7) a new 150-foot-long, 12.5 to 34.5-kilovolt transmission line; and (8) appurtenant facilities. The project would have an estimated annual generation of 9,700 megawatt-hours.

Applicant Contact: Mr. John P. Henry, 726 Eldridge Avenue, Collingswood, NJ 08107–1708, (856) 240–0707.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

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–14257–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24021 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2790–055]

Notice of Proposed Restricted Service List or Section 106 Consultation; Boott Hydropower Inc.; Eldred L. Field Hydroelectric Facility Trust; Lowell Hydroelectric Project; Massachusetts

Rule 2010(d) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR section 385.2010(d), provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Massachusetts State Historic Preservation Officer (SHPO), the National Park Service (NPS), and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the *National Historic Preservation Act, as amended,* (16 U.S.C. section 470f), to complete the section 106 process for the proposed installation of pneumatic crest gates at the Lowell Hydroelectric Project.

Boott Hydropower, Inc. and Eldred L. Field Hydroelectric Facility Trust, as co-licensees for Project No. 2790, are invited to participate in consultation to complete the section 106 process for the proposed license amendment. For purposes of completing the section 106 process, we propose to restrict the service list for Project No. 2790–055 as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Ave., NW., Suite 803, Washington, DC 20004.

John Eddins, Advisory Council on Historic, Preservation, The Old Post Office Building, 1100 Pennsylvania Ave., NW., Suite 803, Washington, DC 20004.

Brona Simon, SHPO, Executive Director, Massachusetts Historical Commission, Commonwealth of Massachusetts, 220 Morrissey Boulevard, Boston, MA 02125.

Kevin M. Webb, Environmental Affairs Coordinator, Boott Hydropower, Inc., Eldred L. Field Hydroelectric Facility Trust, One Tech Drive, Suite 220, Andover, MA 01810.

Michael Creasey, Superintendent. National Park Service, Lowell National Historic Park, 67 Kirk Street, Lowell, MA 01852–1029.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original plus seven copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. A motion may also be filed electronically

via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Dated: September 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24087 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–21–000]

Kenai Pipe Line Company; Tesoro Alaska Company; Tesoro Logistics Operations, LLC; Notice of Request for Jurisdictional Determination or Temporary Waiver of Tariff Filing and Reporting Requirements

Take notice that on September 1, 2011, Kenai Pipe Line Company (KPL), Tesoro Alaska Company (Tesoro Alaska), and Tesoro Logistics, LLC (TLO) (collectively, Tesoro) filed a Request for Jurisdictional Determination, or, in the Alternative, Temporary Waiver of Tariff Filing and Reporting Requirements.

Tesoro requests that the Commission determine that two crude oil pipelines, as well as several crude oil and refined petroleum products pipeline spurs that are part of Tesoro Alaska's internal refinery operations, are not subject to the Commission's jurisdiction under the Interstate Commerce Act (ICA).

Tesoro also requests that the Commission determine that a dock and tank storage that Tesoro also uses as part of its internal refinery operation are not subject to the Commission's jurisdiction.

Any person desiring to intervene or to protest in the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, September 30, 2011.

Dated: September 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24091 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–541–000]

Notice of Request Under Blanket Authorization; Columbia Gas Transmission, LLC

Take notice that on July 26, 2011, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, TX 77056 filed a prior notice request in accordance with sections 157.205, 157.213(b), and 157.216(b) of the Federal Energy Regulatory Commission's (Commission) Regulations under the *Natural Gas Act* and Columbia's authorization in Docket CP83–76–000, to abandon two underperforming natural gas storage wells and their associated well lines and appurtenances situated in Hocking County, Ohio, and Kanawha County, West Virginia, convert one well located in Vinton County, Ohio, from active injection/withdrawal status to observation status, and abandon in place the well line previously connected to the Vinton County, Ohio well being converted to observation status, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to Fredric J. George, Senior Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, or telephone (304) 357–2359, or by fax (304) 357–3206.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be

required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: September 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24090 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6649–008]

Michael J. Donahue; Notice of Termination of Exemption by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of exemption by implied surrender.

b. *Project No.:* 6649–008.

c. *Date Initiated:* September 13, 2011.

d. *Exemptee:* Michael J. Donahue.

e. *Name and Location of Project:* The Fairbanks Mill Project is located on the Sleeper's River in Caledonia County, Vermont.

f. *Initiated Pursuant to:* 18 CFR 4.106.

g. *Exemptee Contact Information:* Mr. Michael J. Donahue, Route 3, Box 269, Lincoln, NH 03251.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002, or *Thomas.papsidero@ferc.gov.*

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet in lieu of paper. 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.* The Commission strongly encourages electronic filings. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be sent to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–6649–008) on any documents or motions filed.

j. *Description of Existing Facilities:* The inoperative project consists of the following existing facilities: (1) Timber-crib dam with an overall length of 60 feet and a maximum height of 10 feet; (2) an intake structure; (3) a 2-inch-diameter, 50-foot-long steel penstock; and (4) a powerhouse containing one unit with a total capacity of 18 kilowatts.

k. *Description of Proceeding:* The exemptee is currently in violation of Standard Article 1 of its exemption granted on October 8, 1982 (21 FERC ¶ 62,070). Section 4.106(a) of the Commission's regulations, 18 CFR 4.106(a) (2011), provides, among other things, that the Commission reserves the right to revoke an exemption if any term or condition of the exemption is violated. The project has not generated since the early 1990s and has been abandoned by the exemptee. By not operating the project as proposed and authorized, the exemptee is in violation of the terms and conditions of the exemption.

Based on staff's most recent inspection on August 18, 2010, the exemptee has not made any progress toward bringing the project back into operation. On April 13, 2011, Commission staff sent a letter to the exemptee requiring him to show cause why the Commission should not initiate a proceeding to terminate the exemption based on his implied surrender of the exemption. The letter directed the exemptee to provide information, including documentation of contracts issued, permits obtained, agreements made, etc., and to show cause why the Commission should not terminate the exemption for lack of adequate progress toward the resumption of generation at the project. To date, the exemptee has failed to respond and the project remains inoperative. Commission staff continues to inspect the project every three years and reports that it remains inoperable and in poor condition.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number excluding the last three digits in the docket number field to access the notice. 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 toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

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, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular proceeding.

o. Filing and Service of Responsive 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 project number of the proceeding 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, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works which are the subject of the termination of exemption. A copy of any protest or motion to intervene must be served upon each representative of the exemptee specified in item g above. If an intervener 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. A copy of all other filings in reference to this notice 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 4.34(b) and 385.2010.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: September 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24019 Filed 9–19–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0206; FRL–9467–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Leather Finishing Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before October 20, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0206, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0206, which is available for public viewing online at *http://www.regulations.gov*, and in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Leather Finishing Operations (Renewal).

ICR Numbers: EPA ICR Number 1985.05, OMB Control Number 2060–0478.

ICR Status: This ICR is schedule to expire on November 30, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Leather Finishing Operations were proposed on October 2, 2000 (65 *FR* 58702), and promulgated on February 27, 2002. These standards apply to any existing, reconstructed, or new leather finishing operations. A leather finishing operation is a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through multistage application of a coating comprising of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers. A leather finishing operation is subject to the regulation only if it is a major source of hazardous air pollutant (HAP) emitting, or has the potential to emit, any single HAP at the rate of 10 tons (9.07 megagrams) or more per year, or any combination of HAP at the rate of 25 tons (22.68 megagrams) or more per year.

Owners and operators must submit notification reports upon the construction or reconstruction of any leather finishing operation. Any leather finishing operation that starts up after proposal, but before promulgation, must submit an initial notification similar to the one submitted by existing sources. Each new or reconstructed source that starts up after promulgation must submit a series of notifications in addition to the initial notification that includes notification of intent to construct or reconstruct, and notification of startup. Upon the collection of twelve months of data after the date of initial notification, owners or operators of leather finishing operations must submit an annual compliance status certification report and, thereafter, annually.

Owners or operators of a leather finishing operation subject to the rule must maintain a file of these measurements, and retain the file for at least five years following the date of

such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart TTTT, and 40 CFR part 63, subpart A, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 33 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Leather finishing operations.

Estimated Number of Respondents: 10.

Frequency of Response: Initially, occasionally, and annually.

Estimated Total Annual Hour Burden: 334.

Estimated Total Annual Cost: $31,495.00, inclusion of labor costs. There are no capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR as compared to the Previous ICR. This situation is due to two considerations: (1) the regulations have not changed over the past three years and not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative, or non-existent, so there is no significant change in the overall burden. There is, however, an increase in the estimated burden cost as currently identified in the OMB Inventory of Approved ICR Burdens. The increase is not due to any program changes. The change in burden cost is due to the use of the most updated labor rates.

Dated: September 13, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–24108 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0357; FRL–9466–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Requirements for BEACH Act Grants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2012. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2008–0357, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Fax:* (202) 566–0409.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2008–0357. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Lars Wilcut, Standards and Health Protection Division, Office of Science and Technology, (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0447; fax number: (202) 566–0409; e-mail address: *wilcut.lars@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0357, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of

information, submit or view public comments, access the index listing of the contents of the docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is the EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are environmental and public health agencies in coastal and Great Lakes states, territories, and tribes.

Title: Reporting Requirements for BEACH Act Grants (Renewal).

ICR numbers: EPA ICR No. 2048.04, OMB Control No. 2040–0244.

ICR status: This ICR is currently scheduled to expire on January 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Beaches Environmental Assessment and Coastal Health (BEACH) Act amends the Clean Water Act (CWA) in part and authorizes the U.S. Environmental Protection Agency (EPA) to award BEACH Act Program Development and Implementation Grants to coastal and Great Lakes states, tribes, and territories (collectively referred to as states) for their beach monitoring and notification programs. The grants will assist those states to develop and implement a consistent approach to monitor recreational water quality; assess, manage, and communicate health risks from waterborne microbial contamination; notify the public of pollution occurrences; and post beach advisories and closures to prevent public exposure to microbial pathogens. To qualify for a BEACH Act Grant, a state must submit information to the EPA documenting that its beach monitoring and notification program is consistent with nine performance criteria outlined in the *National Beach Guidance and Required Performance Criteria for Grants.* For the EPA to award a BEACH Implementation Grant, a state must document that its coastal monitoring and notification program includes or will include the following:

- A risk-based beach evaluation and classification plan.
- A sampling design and monitoring implementation plan.
- Monitoring report submission and delegation procedures.
- Methods and assessment procedures.
- A public notification and risk communication plan.
- Measures to notify the EPA and local governments.
- Measures to notify the public.
- Notification report submission and delegation procedures.
- Public evaluation of the program.

Beach program information will be collected by the EPA's Office of Science and Technology and the applicable EPA regions. All information except the monitoring and notification reports will be stored in the applicable regions. The monitoring and notification information will be stored in the eBEACHES Database and displayed on the EPA's Beaches Web site for use by the public, state environmental and public health agencies, and the EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,400 hours per respondent. This burden represents reports and accompanying data to be submitted each year by the 37 eligible states and territories. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 37.

Frequency of response: Submitting monitoring and notification reports: quarterly; all other reporting: annual.

Estimated total average number of responses for each respondent: 4.

Estimated total annual burden hours: 88,812.

Estimated total annual costs: $11,463,642. This includes an estimated burden cost of $7,520,562 and an

estimated cost of $3,943,080 for maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is an increase of 26 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects the EPA's expectation that states will voluntarily report monitoring and notification data more frequently, in order to improve public health protection at beaches through increased timeliness of water quality results at beaches nationwide. This change also reflects the EPA's expectation that no new jurisdictions will become eligible for BEACH Act grant in the next three years.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 13, 2011.

Ephraim King,

Director, Office of Science and Technology.

[FR Doc. 2011–24089 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–1007; FRL–9467–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting; EPA ICR No. 1715.13, OMB No. 2070–0155. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before October 20, 2011.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2010–1007 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Pamela Myrick, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail code: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 26, 2011 (76 FR 4657), EPA sought comments on this renewal pursuant to 5 CFR 1320.8(d). EPA received multiple comments during the comment period, which are addressed in the Supporting Statement. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2010–1007, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov*. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This information collection request (ICR) combines information collection activities defined in existing ICRs 1715.09 (ICR for lead-based paint activities), 1715.10 (ICR addendum for the 2008 Renovation, Repair and Painting final rule), and 1715.12 (ICR for the 2010 Renovation, Repair and Painting opt-out and recordkeeping final rule) covering the reporting and recordkeeping requirements for individuals or firms conducting lead-based paint activities or renovation in or on houses, apartments, or child-occupied facilities built before 1978, under the authority of sections 402 and

404 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2682, 2684).

Sections 402(a) and 402(c)(3) of TSCA require EPA to develop and administer a training and certification program as well as work practice standards for persons who perform lead-based paint activities and/or renovations. The current regulations in 40 CFR part 745, subpart E, cover work practice standards, recordkeeping and reporting requirements, individual and firm certification, and enforcement for renovations done in target housing or child-occupied facilities. The current regulations in 40 CFR part 745, subpart L, cover inspections, lead hazard screens, risk assessments, and abatement activities (referred to as ''lead-based paint activities'') done in target housing and child-occupied facilities. The current regulations in 40 CFR part 745, subpart Q, establish the requirements that state or tribal programs must meet for authorization to administer the standards, regulations, or other requirements established under TSCA Section 402. (See Attachment 2 for 40 CFR part 745, subparts E, L and Q.) Section 401 of TSCA defines target housing as any housing constructed before 1978 except housing for the elderly or disabled or 0-bedroom dwellings.

Sections 402(a) and 402(c)(3) of TSCA require reporting and/or recordkeeping from four entities: Firms engaged in lead-based paint activities or renovations in target housing and child-occupied facilities; individuals who perform lead-based paint activities in target housing and child-occupied facilities; training providers; and states/territories/tribes/Alaskan native villages. This information collection applies to the reporting and recordkeeping requirements outlined above.

Responses to the collection of information are mandatory (see 40 CFR part 745, subparts E, L and Q). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.8 hours for individuals, 9.9 hours for firms, and 5.8 hours for governments per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this ICR are persons who provide training in lead-based paint activities and/or renovation, persons who are engaged in lead-based paint activities and/or renovation, and state agencies that administer lead-based paint activities and/or renovation programs.

Frequency of Collection: Annual.

Estimated Average Number of Responses for Each Respondent: Varies.

Estimated No. of Respondents: 367,815.

Estimated Total Annual Burden on Respondents: 3,312,524 hours.

Estimated Total Annual Labor Costs: $151,077,143.

Changes in Burden Estimates: This request reflects a decrease of 497,229 hours (from 3,809,753 hours to 3,312,524 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease reflects: EPA's revisions to the estimated number of respondents based on the number of respondents reporting to the Agency under the prior information collection; EPA's revisions to per-activity burden estimates to simplify some assumptions and to make estimation methods consistent; and characterization as Agency burden some burden elements that had previously been described as respondent burden. The Supporting Statement provides details on the change in burden estimate. The change is an adjustment.

Dated: September 13, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–24112 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0204; FRL–9467–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Friction Materials Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before October 20, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0204, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0204, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Friction Materials Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 2025.05, OMB Control Number 2060–0481.

ICR Status: This ICR is schedule to expire on November 30, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Friction Materials Manufacturing were proposed on October 4, 2001 (66 *FR* 50768), and promulgated on October 18, 2002 (67 *FR* 64498).

These standards apply to any new, reconstructed, or existing solvent mixers located at any friction materials manufacturing facility engaged in the manufacture of friction materials such as brake and clutch linings. A friction materials manufacturing facility is a major source of hazardous air pollutant (HAP) if it emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year, or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

Owners or operators must submit notification reports upon the construction or reconstruction of any friction materials manufacturing facility. Semiannual reports for periods of operation during which the emission limitation has exceeded (or reports certifying that no exceedances have occurred) also are required. Affected entities must retain reports and records for a total of five years: two years at the site, and the remaining three years at an off-site location.

Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to ensure that the pollution control devices are properly installed and that the operating standard is being met. The information generated by monitoring, recordkeeping, and reporting requirements described in this ICR are used by the Agency to ensure that facilities that are affected by the standard continue to operate the control equipment and achieve continuous compliance with the regulation.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 162 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Friction materials manufacturing.

Estimated Number of Respondents: 4.

Frequency of Response: Annually, semiannually, initially, and occasionally.

Estimated Total Annual Hour Burden: 1,296.

Estimated Total Annual Cost: $123,461, which includes $122,373 in labor costs, no capital/startup costs, and $1,088 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR as compared to the previous ICR. This situation is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative, or non-existent, so there is no significant change in the overall burden. There is, however, an increase in the estimated burden cost as currently identified in the OMB Inventory of Approved ICR Burdens. The increase is not due to any program changes. The change in burden cost is due to the use of the most updated labor rates.

Dated: September 13, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–24111 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0205; FRL–9467–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Primary Copper Smelters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before October 20, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0205, to (1) EPA online using *http://www.regulations.gov* (our

preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0205, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Primary Copper Smelters (Renewal).

ICR Numbers: EPA ICR Number 1850.06, OMB Control Number 2060–0476.

ICR Status: This ICR is schedule to expire on November 30, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Copper Smelters were proposed on April 20, 1998 (63 *FR* 19582), and on June 26, 2000 (65 *FR* 39326), respectively. These standards apply to any existing, reconstructed, or new primary copper smelters. The affected sources are each copper concentrate dryer, each smelting furnace, slag cleaning vessel, each copper converter department, and the entire group of fugitive emission sources.

Affected owners and operators are required to meet specific monitoring, recordkeeping, and reporting requirements in order to demonstrate initial and continuous compliance with the rule. A primary copper smelter is only subject to the regulation if it is a major source of hazardous air pollutant (HAP) emitting or has the potential to emit any single HAP at the rate of 10 tons or more per year or any combination of HAP at the rate of 25 tons or more per year.

Owners and operators must submit notification reports upon the construction, reconstruction, or modification of any primary copper smelter. Also, required is a one-time-only initial notification for new and reconstructed sources. The respondents are required to submit an annual performance test for each control device, and a semiannual summary report to EPA. Respondents subject to the final rule are required to prepare and maintain on site two site-specific operating plans: 1) a startup, shutdown, malfunction plan, and 2) a fugitive dust control plan. Owners or operators of primary copper smelters facilities subject to the rule must maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart QQQ, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 196 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Primary copper smelters.

Estimated Number of Respondents: 3.

Frequency of Response: Monthly, semiannually, annually, and initially.

Estimated Total Annual Hour Burden: 8,837.

Estimated Total Annual Cost: $855,477, which includes $847,257 in labor costs, no capital/startup costs, and

$8,220 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This situation is due to two considerations: (1) The regulations have not changed over the past three years and not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative, or non-existent, so there is no significant change in the overall burden. There is, however, an increase in the estimated burden cost as currently identified in the OMB Inventory of Approved ICR Burdens. The increase is not due to any program changes. The change in burden cost is due to the use of the most updated labor rates.

Dated: September 13, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–24110 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0203; FRL–9467–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Engine Test Cells/Stands (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before October 20, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0203 to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0203, which is available for public viewing online at *http://www.regulations.gov*, and in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Engine Test Cells/Stands (Renewal)

ICR Numbers: EPA ICR Number 2066.05, OMB Control Number 2060–0483.

ICR Status: This ICR is schedule to expire on November 30, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Engine Test Cells/Stands were proposed on May 14, 2002 (67 FR 34547), and promulgated on May 27, 2003 (68 FR 28785). These standards apply to any existing, reconstructed, or new affected sources. An affected source is the collection of all equipment and activities associated with engine test cells/stands used for testing uninstalled stationary or uninstalled mobile engines. Respondents of affected sources are subject to the requirements of 40 CFR part 63, subpart A, the General Provisions, unless the regulation specifies otherwise.

Owners and operators must submit an initial notification reports upon the construction, or reconstruction of any engine test cells/stands used for testing internal combustion engines. The respondents are required to submit a semiannual compliance report. If there were no deviations from the emission limitation and the continuous emission monitoring system (CEMS) was operating correctly, the semiannual report must contain a statement that no deviation occurred. If a deviation occurred from an emission limit, the report must contain detailed information of the nature of the deviation. Performance test reports are the Agency's records of a source's initial capability to comply with the emission standards, and serve as a record of the operating conditions under which compliance is to be achieved.

The information generated by monitoring, recordkeeping and reporting requirements described in this ICR are used by the Agency to ensure that facilities affected by the standard

continue to operate the control equipment and achieve continuous compliance with the regulation. Owners or operators of engine test cells/stands facilities subject to the rule must maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart PPPPP, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

In order to ensure compliance with these standards, adequate reporting and recordkeeping are necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 76 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining, information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Engine test cells/stands.

Estimated Number of Respondents: 18.

Frequency of Response: Initially, annually, and semiannually.

Estimated Total Annual Hour Burden: 3,043.

Estimated Total Annual Cost: $293,761, which includes $288,361 in labor costs, no capital/startup costs, and $5,400 in operation and maintenance (O&M) costs.

Changes in the Estimated: There is no increase in the number of affected facilities or the number of responses as compared to the previous ICR. There is, however, an increase in the estimated burden cost as currently identified in the OMB Inventory of Approved ICR Burdens. The increase is not due to any program changes. The change in burden cost is due to the use of the most updated labor rates.

Dated: September 13, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–24109 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0742; FRL–9466–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that the EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2012. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0742, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Agency Information Collection Activities; Proposed Collection; Comment Request; Outer Continental Shelf Air Regulations; EPA ICR No. 1601.08; OMB Control No. 2060–0249 Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0742. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. David Painter, Air Quality Policy Division, Office of Air Quality Planning and Standards, (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5515; fax number: (919) 541–5509; e-mail address: *painter.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–00742,which is available for online viewing at *http://*

www.regulations.gov, or in-person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity does this apply to?

Affected entities: Entities potentially affected by this action are all outer continental shelf (OCS) sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). For sources located within 25 miles of states' seaward boundaries, the requirements are the same as those that would be applicable if the source were located in the corresponding onshore area (COA). In states affected by this rule, state boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where the state's boundary extends three leagues (about nine miles) from the coastline.

Title: Outer Continental Shelf Air Regulations.

ICR numbers: EPA ICR Number 1601.08 and OMB Control Number 2060–0249.

ICR status: This ICR is currently scheduled to expire on January 31, 2012.

Abstract: Sources located beyond 25 miles of states' boundaries are subject to federal requirements (implemented and enforced solely by the EPA) for Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants Standards (NESHAP), the federal title V operating permit program, and the enhanced compliance and monitoring regulations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 et seq.) requires that all federal actions conform with the State Implementation Plans (SIPs) to attain and maintain the NAAQS. Depending on the type of action, the federal entities must collect information themselves, hire consultants to collect the information or require applicants/sponsors of the federal action to provide the information.

The type and quantity of information required will depend on the circumstances surrounding the action. First, the entity must make an applicability determination. If the source is located within 25 miles of the state's seaward boundaries as established in the regulations, the requirements are the same as those that would be applicable if the source were located in the COA. State and local air pollution control agencies are usually requested to provide information concerning regulation of offshore sources and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

On April, 29, 2008, the EPA last announced a renewal of the ICR for OCS air regulations. At that time we provided our estimate that the reporting and recordkeeping burden for this collection of information would average 549 hours per response. We then summarized the burden as follows:

Estimated Total Number of Potential Respondents: 49.

Estimated Number of Responses: 62.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 34,024.

Estimated Total Annual Costs: $1,857,950, which includes $0 annualized capital startup costs, $17,886 O&M costs, and $1,840,064 in annual labor costs.

Included in the docket for this proposed ICR renewal is a copy of the supporting statement provided to OMB in 2008 which summarized the final results of the analyses that followed our prior request for public comment. The

approach to the prior supporting statement will be applied to summarize any provided information for the purpose of updating the estimate of burden for the next three years.

Are there changes in the estimates from the last approval?

At this time we are obtaining updated data from which to re-calculate burden estimates for the ICR renewal. The preliminary data is sufficiently incomplete to preclude the EPA from projecting the change in burden. There is an indication of an increase of activity for the Atlantic region and the coast of Alaska.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. Additionally, the EPA is consulting with the Department of Interior's Bureau of Ocean Energy Management, Regulation and Enforcement to obtain detailed estimates of offshore activity that would fall under air regulations and incur burden. The incoming information will be incorporated into an updated supporting statement for inclusion in an OMB ICR package. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 14, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–24093 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9466–9]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet in October 2011. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's Web site: *http://www.epa.gov/air/caaac/mobile_sources.html.* MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserver, send a blank e-mail to *lists-mstrs@lists.epa.gov.*

DATES: Thursday October 6, 2011 from 9 a.m. to 4:30 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting is currently scheduled to be held at the Doubletree Crystal City, 300 Army Navy Drive, Arlington, Virginia, United States 22202–2891. However, this date and location are subject to change and interested parties should monitor the Subcommittee Web site (above) for the latest logistical information. The hotel is located three blocks from the Pentagon City Metro Station.

FOR FURTHER INFORMATION CONTACT:

For technical information: Elizabeth Etchells, Designated Federal Officer, Transportation and Climate Division, Mailcode 6405J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Ph: 202–343–9231; e-mail: *etchells.elizabeth@epa.gov.*

For logistical and administrative information: Ms. Cheryl Jackson, U.S. EPA, Transportation and Regional Programs Division, Mailcode 6405J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; 202–343–9653; e-mail: *jackson.cheryl@epa.gov.*

Background on the work of the Subcommittee is available at: *http://www.epa.gov/air/caaac/mobile_sources.html.* Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. Etchells at the address above by September 23, 2011. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals With Disabilities: For information on access or services for individuals with disabilities, please contact Ms. Etchells or Ms. Jackson (see above). To request accommodation of a disability, please contact Ms. Etchells or Ms. Jackson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 14, 2011.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2011–24097 Filed 9–19–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, September 22, 2011

September 15, 2011.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 22, 2011, which is scheduled to commence at 10:45 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item Nos.	Bureau	Subject
1	Public Safety and Homeland Security.	*Title:* Framework for Next Generation 911 Deployment (PS Docket No. 10–255) *Summary:* The Commission will consider a Notice of Proposed Rulemaking to accelerate the development and deployment of Next Generation 911 (NG911) technology to improve public safety by enabling the public to send text, photos, videos, and data communications to 911 Public Safety Answering Points (PSAPs) and enhancing the information available to PSAPs and first responders for assessing and responding to emergencies.

Item Nos.	Bureau	Subject
2	Public Safety and Homeland Security.	The Public Safety and Homeland Security Bureau will present a white paper on the use of deployable aerial communications architecture to facilitate the ability of first responders to communicate with each other and consumers to reach first responders in the wake of natural and manmade disasters, even in situations where there is severe damage to terrestrial communications infrastructure. The report will make recommendations regarding next steps the FCC should consider to promote the development and use of deployable aerial communications architecture.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–24255 Filed 9–16–11; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: *Thursday, September 22, 2011 at 10 a.m.*

PLACE: 999 E Street, N.W., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of September 1, 2011.

Draft Interpretive Rule on When Certain Independent Expenditures Are ''Publicly Disseminated'' for Reporting Purposes.

Draft Advisory Opinion 2011–16: Dimension4, Inc. PAC.

Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel.

Draft Advanced Notice of Proposed Rulemaking Regarding Disclaimers on Certain Internet Communications.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shelley Garr, Deputy Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–24169 Filed 9–16–11; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the *Bank Holding Company Act of 1956* (12 U.S.C. 1841 et *seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 14, 2011.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. Wellesley Bancorp, Inc., Wellesley, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Wellesley Bank, Wellesley, Massachusetts.

B. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Macon Bancorp, Franklin, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Macon Bank, Inc., Franklin, North Carolina.

Board of Governors of the Federal Reserve System.

Dated: September 14, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–23998 Filed 9–19–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the *Bank Holding Company Act of 1956* (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 5, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Continental Community Bancorporation, Inc., West Des Moines, Iowa; to become a bank holding company by acquiring up to 80 percent of the voting shares of Polk County Bank, Johnston, Iowa.

Board of Governors of the Federal Reserve System.

Dated: September 15, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–24065 Filed 9–19–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Performance Review Board Members

Title 5, U.S.C. Section 4314(c)(4) of the *Civil Service Reform Act of 1978*, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register.**

The following persons may be named to serve on the Performance Review Boards or Panels, which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services.

Joel S. Ario,
Julia G. Bataille,
Mirtha R. Beadle,
Melanie M. Bella,
Sherri A. Berger,
Angela Billups,
Gary L. Cantrell,
Patrick H. Conway,
Kathleen M. Crosby,
John Czajkowski,
Cheryl R. Dammons,
Michelle S. Davis,
Nancy E. De Lew,
Theodore M. Doolittle,
Gregory J. Downing,
Ivor D'Souza,
Kana Enomoto,
Michael E. Etzinger,
Douglas B. Fridsma,
Alexandra B. Garcia,
Amy L. Haseltine,
Robert F. Heil Jr.,
Jay M. Hodes,
David E. Hohman,
Barbara J. Holland,
Richard Ikeda,
Christine Jones,
Melanie M. Keller,
Gia Lee,
Nancy C. Lee,
Eric N. Lindblom,
Michael W. McCauley,
Eileen C. McDaniel,
Matthew D. McKearn,
Joy M. Miller,
Valerie E. Morgan Alston,
Michael J. Nelson,
Dawn M. O'Connell,
Robert F. Owens Jr.,
Jennifer L. Parker,
Aida M. Perez,
Cheri M. Rice,
Geoffrey Roth,
Roberto Ruiz,
Dorinda A. Salcido,
Daniel J. Schreiner,
William B. Schultz,
Neil Shapiro,
Jeremy B. Sharp,
George H. Sheldon,
Steven D. Silverman,
Rebecca T. Slifkin,
Douglas F. Small,
Nancy K. Stade,
Christian J. Stenrud,
Bridgett E. Taylor,
Brian G. Trent,
James E. Tyler Jr.,
Stephen J. Veneruso,
Karen V. Walker Bryce,
Luis A. Wilmot,
Holly J. Wong,
Robert K. Yee,
Cheryl L. Ziegler Ragland.

Non-SES:

Barbara Bowman,
Christine Branche,
Michael Gottesman,
Anne Haddix,
Steven Musser,
Jan Nicholson,
Steven Pollack,
Tanja Popovic,
Steve Redd,
Sally Rockey,
Jonathan Sackner-Bernstein,
Tom Sinks,
William Slikker,
Lawrence Tabak,
Carolyn Wilson,
Robert Yetter.

Dated: September 13, 2011.

Denise L. Wells,

Deputy Assistant Secretary for Human Resources, Department of Health and Human Services.

[FR Doc. 2011–24039 Filed 9–19–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting on the Animal Generic Drug User Fee Act (AGDUFA). FDA invites public comment on the AGDUFA program and suggestions regarding the features FDA should propose for the next AGDUFA program.

Date and Time: The meeting will be held on November 7, 2011, from 1 p.m. to 4 p.m.

Location: The meeting will be held at the Food and Drug Administration, 7519 Standish Pl., 3d floor, rm. A, Rockville, MD 20855. If you require special accommodations, please contact Patricia Arnwine (see *Contact Person*) at least 7 days before the meeting.

Contact Person: Donal Parks, Food and Drug Administration, Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855, 240–276–8688, FAX: 240–276–9744, *Donal.Parks@fda.hhs.gov*; or Patricia Arnwine, Food and Drug Administration, Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855, 240–276–9724, FAX: 240–276–9744, *Patricia.Arnwine@fda.hhs.gov*.

Comments: Regardless of attendance at the meeting, interested persons may submit either electronic or written comments regarding this document. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document. Comments received by October 26, 2011, will be taken into consideration before the public meeting.

Transcripts: Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm* approximately 30 days after the meeting.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing its intention to hold a public meeting on AGDUFA. The authority for AGDUFA expires September 30, 2013. Without new legislation, FDA will no longer have the authority to collect user fees to fund the generic animal drug review process. Prior to beginning negotiations with the regulated industry on AGDUFA reauthorization, section 740A(d)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379j–13(d)(2)) requires FDA to: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization; (2) hold a public meeting at which the public may present its views on the reauthorization including specific suggestions for changes to the goals referred to in section 740A(a) of FD&C Act; (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes; and (4) publish the comments on FDA's Web site. FDA is holding a public meeting to gather information on what FDA should consider including in the reauthorization of AGDUFA. FDA is interested in responses from the public on the following two general questions and welcomes other pertinent information that stakeholders would like to share:

1. What is your assessment of the overall performance of the AGDUFA program thus far?

2. What aspects of AGDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

The following information is provided to help potential meeting participants better understand the history and evolution of AGDUFA, and its current status.

II. What is AGDUFA? What does it do?

The Animal Generic Drug User Fee Act enacted in 2008 (Public Law 110–316; hereinafter referred to as ''AGDUFA I'') amended the FD&C Act to authorize the FDA's first-ever generic animal drug user fee program. AGDUFA provides FDA with additional funds to enhance the performance of the generic animal drug review process. Furthermore, the authorization of AGDUFA enables FDA's continued assurance that generic animal drug products are safe and effective, and enables FDA's continued support for lower-cost alternatives to brand drugs for consumers. Under AGDUFA, FDA agreed to meet review performance goals for certain submissions over 5 years from fiscal year (FY) 2009 through FY 2013. These review performance goals strive to expedite the review of abbreviated new animal drug applications (ANADAs) and reactivations, supplemental ANADAs, and generic investigational new animal drug (JINAD) submissions.

Under AGDUFA, the industry agreed to pay user fees that are available to FDA, in addition to appropriated funds, to spend on the generic animal drug review process. Moreover, FDA's authority to collect user fees is contingent on a certain level of spending from appropriated funds, as adjusted for inflation.

AGDUFA established increasingly-stringent review performance goals over a 5-year period from FY 2009 through FY 2013. By the final year of AGDUFA, FDA agreed to review and act on 90 percent of the following submission types within the specified time frames:

- Original ANADAs and reactivations within 270 days of the submission date.
- Administrative ANADAs (ANADAs submitted after all scientific decisions have been made during the JINAD process, i.e., prior to the submission of the original ANADAs) within 100 days after the submission date.
- Manufacturing supplemental ANADAs and reactivations within 270 days after the submission date.
- JINAD study submissions within 270 days after the submission date.
- JINAD protocol submissions within 100 days after submission date. JINAD protocol submissions consist of protocols without substantial data that FDA and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an ANADA or supplemental ANADA.

The additional resources provided under AGDUFA I enabled FDA to completely eliminate the backlog of ANADA and JINAD submissions by August 2010.

FDA has published a number of reports that provide useful background on AGDUFA. AGDUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports and plans can be found at: *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm.*

III. What information should you know about the meeting?

A. When and where will the meeting occur? What format will FDA use?

Throughout this document, FDA has been announcing a public meeting to hear stakeholders' views on what FDA should consider for the AGDUFA II program. In general, the meeting format will include presentations by FDA followed by an open public comment period. Registered speakers for the open public comments will be grouped and invited to speak in the order of their affiliation and time of registration (scientific and academic experts/veterinary professionals, representatives of consumer advocacy groups, and the regulated industry). FDA presentations are planned from 1 p.m. until 2 p.m. The open public comment portion of the meeting for registered speakers is planned to begin at 2 p.m. An opportunity for public comments from meeting attendees will commence following the registered presentations, if time permits.

FDA policy issues are beyond the scope of these reauthorization discussions. Accordingly, the presentations should focus on process enhancements and funding issues, not on policy issues.

The docket will remain open for either electronic or written comments through December 7, 2011.

B. What questions would FDA like the public to consider?

Please consider the following questions for this meeting:

1. What is your assessment of the overall performance of the AGDUFA program thus far?

2. What aspects of AGDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

C. How do you register for the meeting or submit comments?

If you wish to attend and/or present at the meeting, please register by e-mail to *AGDUFAReauthorization@fda.hhs.gov* by October 26, 2011. Your e-mail should contain complete contact information for each attendee—name, title, affiliation, address, e-mail, and phone number. Also, please self-identify as a member of one of the following stakeholder categories: Scientific or academic experts; veterinary professionals; patient and consumer advocacy groups; or the regulated industry. Registration is free and will be on a first-come, first-served basis. Early registration is recommended since seating is limited. FDA may limit the number of participants from each organization based on space constraints. Registrants will receive confirmation once their registrations are accepted. Onsite registration on the day of the public meeting will be based on space availability. FDA will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak. If you need special accommodations, please contact Patricia Arnwine (see *Contact Person*) at least 7 days before the meeting.

In addition, interested persons may submit either electronic or written comments to the Division of Dockets Management (see *Comments*). It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. To ensure consideration before the public meeting, all comments must be received by October 26, 2011.

D. Will meeting transcripts be available?

Please be advised that as soon as the transcript is available, it will be accessible at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be made available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: September 13, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24083 Filed 9–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0656]

Animal Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the Animal Drug User Fee Act (ADUFA). FDA invites public comment on the ADUFA program and suggestions regarding the features FDA should propose for the next ADUFA program.

Date and Time: The meeting will be held on November 7, 2011, from 9 a.m. to 12 noon.

Location: The meeting will be held at the Food and Drug Administration, 7519 Standish Pl., 3d floor, Rm. A, Rockville, MD 20855. If you require special accommodations, please contact Patricia Arnwine (see *Contact Person*) at least 7 days before the meeting.

Contact Person: Donal Parks, Food and Drug Administration, Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855, 240–276–8688, FAX: 240–276–9744, *Donal.Parks@fda.hhs.gov,* or Patricia Arnwine, Food and Drug Administration, Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855, 240–276–9724, FAX: 240–276–9744, *Patricia.Arnwine@fda.hhs.gov.*

Comments: Regardless of attendance at the meeting, interested persons may submit either electronic or written comments regarding this document. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document. Comments received by October 26, 2011, will be taken into consideration before the public meeting.

Transcripts: Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/ucm042891.htm* approximately 30 days after the meeting.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing its intention to hold a public meeting on ADUFA. The authority for ADUFA expires September 30, 2013. Without new legislation, FDA will no longer have the authority to collect user fees to fund the new animal drug review process. Prior to beginning negotiations with the regulated industry on ADUFA reauthorization, section 740A(d)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379j–13) requires FDA to: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization; (2) hold a public meeting at which the public may present its views on the reauthorization including specific suggestions for changes to the goals referred to in section 740A(a) of the FD&C Act; (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes; and (4) publish the comments on FDA's Web site. FDA is holding a public meeting to gather information on what FDA should consider including in the reauthorization of ADUFA. FDA is interested in responses from the public on the following two general questions and welcomes other pertinent information that stakeholders would like to share:

1. What is your assessment of the overall performance of the ADUFA program thus far?

2. What aspects of ADUFA should be retained, changed, or discontinued to further strengthen and improve the program?

The following information is provided to help potential meeting participants better understand the history and evolution of ADUFA, and its current status.

II. What is ADUFA? What does it do?

The Animal Drug User Fee Act enacted in 2003 (Pub. L. 108–130; hereinafter referred to as ''ADUFA I''), authorized FDA to collect user fees that were to be dedicated to expediting the review of animal drug applications in accordance with certain performance goals. The implementation of ADUFA I provided a significant funding increase for the new animal drug application review process, and enabled FDA to

increase the number of staff dedicated to the new animal drug application review process by 30 percent since 2003.

Under ADUFA I, the industry agreed to pay user fees that are available to FDA, in addition to appropriated funds, to spend on the new animal drug application review process. Moreover, FDA's authority to collect user fees is contingent on a certain level of spending from appropriated funds, as adjusted for inflation.

As part of ADUFA I, FDA established review performance goals that have been phased in over a 5-year period. These performance goals set from FY 2004 to FY 2008 were intended to achieve progressive, yearly improvements in the time for review of new animal drug applications. By the 5th and final year of ADUFA ending on September 30, 2008, FDA agreed to review and act on 90 percent of the following submission types within specified times:

- New animal drug applications and reactivations of such applications within 180 days after submission date.
- Nonmanufacturing supplemental new animal drug applications (that is, supplemental new animal drug applications for which safety or effectiveness data are required) and reactivations of such supplemental applications within 180 days after submission date.
- Manufacturing supplemental new animal drug applications and reactivations of such supplemental applications within 120 days after submission date.
- Investigational new animal drug study submissions within 180 days after submission date.
- Investigational new animal drug submissions consisting of protocols, that FDA and the sponsor consider to be an essential part of making the decision to approve or not approve a new animal drug application or supplemental new animal drug application, without substantial data, within 60 days after submission date.
- Administrative new animal drug applications submitted after all scientific decisions have been made in the investigational new animal drug process (that is, prior to submission of the animal drug application) within 60 days after submission date.

In 2008, before ADUFA I expired, Congress passed the Animal Drug User Fee Amendments of 2008 (Pub. L. 110–316; hereinafter referred to as ''ADUFA II'') which included an extension of ADUFA for an additional 5 years (FY 2009 to FY 2013). ADUFA II performance goals were established based on ADUFA I FY 2008 review time frames. In addition, FDA agreed to the following program enhancements to reduce review cycles and improve communications during reviews:

- Incorporating an ''end-review amendment'' (ERA) process to amend pending submissions to achieve a complete review decision sooner and reduce the number of review cycles.
- Developing an electronic submission tool that allows industry to submit drug applications electronically.
- Participating with industry in public workshops on mutually agreed-upon topics.
- Improving communications by enhancing the timeliness and predictability of foreign pre-approval inspections.

FDA has published a number of reports that provide useful background on ADUFA I and ADUFA II. ADUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports and plans can be found at: *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm.*

III. What information should you know about the meeting?

A. When and where will the meeting occur? What format will FDA use?

Throughout this document, FDA has been announcing a public meeting to hear stakeholders' views on what FDA should consider for the ADUFA III program. FDA will conduct the meeting on November 7, 2011, at 7519 Standish Pl., 3rd floor, Rm. A, Rockville, MD 20855. (see *Comments*). In general, the meeting format will include presentations by FDA followed by an open public comment period. Registered speakers for the open public comments will be grouped and invited to speak in the order of their affiliation and time of registration (scientific and academic experts/veterinary professionals, representatives of consumer advocacy groups, and the regulated industry). FDA presentations are planned from 9 a.m. until 10 a.m. The open public comment portion of the meeting for registered speakers is planned to begin at 10 a.m. An opportunity for public comments from meeting attendees will commence following the registered presentations, if time permits.

FDA policy issues are beyond the scope of these reauthorization discussions. Accordingly, the presentations should focus on process enhancements and funding issues, not on policy issues.

The docket will remain open for either electronic or written comments through December 7, 2011.

B. What questions would FDA like the public to consider?

Please consider the following questions for this meeting:

1. What is your assessment of the overall performance of the ADUFA II program thus far?
2. What aspects of ADUFA should be retained, changed, or discontinued to further strengthen and improve the program?

C. How do you register for the meeting or submit comments?

If you wish to attend and/or present at the meeting, please register by email to *ADUFAReauthorization@fda.hhs.gov* by October 26, 2011. Your e-mail should contain complete contact information for each attendee—name, title, affiliation, address, e-mail, and phone number. Also, please self-identify as a member of one of the following stakeholder categories: Scientific or academic experts; veterinary professionals; patient and consumer advocacy groups; or the regulated industry. Registration is free and will be on a first-come, first-served basis. Early registration is recommended since seating is limited. FDA may limit the number of participants from each organization based on space constraints. Registrants will receive confirmation once their registrations are accepted. Onsite registration on the day of the public meeting will be based on space availability. FDA will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak. If you need special accommodations, please contact Patricia Arnwine (see *Contact Person*) at least 7 days before the meeting.

In addition, interested persons may submit either electronic or written comments to the Division of Dockets Management (see *Comments*). It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. To ensure consideration before the public meeting, all comments must be received by October 26, 2011.

D. Will meeting transcripts be available?

Please be advised that as soon as the transcript is available, it will be accessible at *http://www.fda.gov/ForIndustry/UserFees/*

AnimalDrugUserFeeActADUFA/ucm042891.htm. It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be made available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: September 13, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24082 Filed 9–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0640]

Magnetic Resonance Imaging Safety; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Magnetic Resonance Imaging (MRI) Safety Public Workshop.'' The purpose of the public workshop is to discuss factors affecting the safe use of magnetic resonance imaging (MRI) and approaches to mitigate risks. The overall goal is to discuss strategies to minimize patient and staff risk in the MRI environment.

DATES: The public workshop will be held on October 25, 2011, from 8:30 a.m. to 5 p.m. EDT and on October 26, 2011, from 8:30 a.m. to 5 p.m. EDT.

ADDRESSES: The public workshop will be held in the Great Room at the FDA White Oak Conference Center, Bldg 31, rm. 1503, 10903 New Hampshire Ave., Silver Spring, MD, 20993.

FOR FURTHER INFORMATION CONTACT: Carol Krueger, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5437, Silver Spring, MD 20993, 301–796–3241, FAX: 301–847–8510, or e-mail: *Carol.Krueger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Registration: Registration is free and on a first-come, first-served basis. Persons interested in attending this workshop must register online by 5 p.m. on October 4, 2011. Early registration is recommended because facilities are limited; therefore, FDA may limit the number of participants from each organization. If time and space permit, on-site registration on the day of the public workshop will be provided beginning at 7:30 a.m. If you need special accommodations due to a disability, please contact Cynthia Garris, e-mail: *Cynthia.Garris@fda.hhs.gov* or phone: 301 796–5861 no later than October 11, 2011.

To register for the public workshop, please visit the following Web site: *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm270720.htm* (or go the ''FDA Medical Devices News & Events—Workshops and Conferences'' calendar and select this public workshop from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, e-mail, and telephone number. For those without Internet access, please call the Contact Person to register. Registrants will receive confirmation once they have been accepted. You will be notified if you are on a waitlist.

Streaming Webcast of the Public Workshop: This workshop will also be webcast. Persons interested in viewing the webcast must register online by 5 p.m. on October 4, 2011. Early registration is recommended because webcast connections are limited. Organizations are requested to register all participants, but view using one connection per location. Webcast participants will be sent technical system requirements after registration, and will be sent connection access information after October 20, 2011. If you have never attended a Connect Pro event before, test your connection at: *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit: *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Requests for Oral Presentations: This workshop includes public comment and topic-focused roundtable sessions. During on-line registration you may indicate if you wish to present during a public comment session or participate in a roundtable session, and which topics you wish to address. FDA has included general topics in this document. FDA will do its best to accommodate requests to make public comment and participate in the roundtable sessions. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the roundtable. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify roundtable participants. All requests to make oral presentations must be received by the close of registration on October 4, 2011. If selected for presentation, any presentation materials must be sent by email to the Contact Person no later than October 11, 2011. No commercial promotional material will be permitted to be presented or distributed at the workshop.

Comments: FDA is holding this public workshop to obtain information on a number of questions regarding factors affecting MRI safe use. The deadline for submitting written comments related to this public workshop is November 22, 2011. Regardless of attendance at the public workshop, interested persons may submit written or electronic comments. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* It is necessary to send only one set of comments. Please identify written comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. 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.*

I. Background

The number of MRI procedures performed each year continues to rise. At the same time, MRI technology, implanted medical devices and medical device accessories (non-implanted) are becoming more complex. There is increasing demand to scan patients with implanted or accessory medical devices, and the presence of these devices are becoming commonplace in the MRI suite during imaging procedures. While MRI procedures are relatively safe, there are hazards inherent to the MRI environment that must be considered to ensure the safety of patients, healthcare providers, and others who enter the MRI suite. The Agency recognizes the need to work with stakeholders to identify

hazard reduction strategies that minimize risk in the MRI environment.

Through this effort, FDA and stakeholder groups will take steps to promote the safe use of MRI by increasing awareness of safety issues that may occur in the MRI environment and by identifying regulatory, policy and system-oriented solutions to mitigate risk. FDA can advance these goals by collaborating with medical device and health care industries, and the healthcare provider and consumer communities.

II. Topics for Discussion at the Public Workshop

The public workshop will be organized to discuss the following topic areas:

A. General MRI Safety

- Multiple professional organizations, patient safety groups and accrediting bodies, i.e. the American College of Radiology (ACR), the International Society for Magnetic Resonance in Medicine (ISMRM), Emergency Care Research Institute (ECRI Institute), and the Joint Commission (TJC), have sponsored MRI safety conferences and published recommendations and strategies for MRI safe practices. FDA would like public comment on the extent these practices have been adopted, and if they have not, what are the reasons for not adopting/implementing these practices, and given that FDA does not regulate the practice of medicine, what can FDA do to improve adoption.
- FDA would like public comment on the policies and procedures individual sites have in place governing the use of non-implanted medical devices entering the MRI suite.

B. Ferromagnetic Detectors (FD)

- FDA would like public comment on the user experience with ferromagnetic detectors (FD) and to gather information on whether these devices improve MRI safety. FDA would also like to understand any drawbacks to the use of FD and other risk/benefit/cost considerations by sites that are considering adopting the technology.
- FDA would also like public comment on the reasons for not adopting/implementing use of FD.

C. Scanning Subjects Known To Have Medical Implants

- FDA would like public comment on the clinical scenario and the challenges (technical and otherwise) involved in the scanning of patients with implanted medical devices. FDA is particularly interested in hearing how individual sites make the decision of whether or not to scan a patient with an implanted medical device, or any special monitoring of the patient's condition or the implanted medical device's performance.
- Safely scanning patients with implanted medical devices requires coordination between any MRI system and the implanted medical device, as not all implants can be safely scanned in all MRI systems. Current FDA labeling requirements for ''MR Conditional'' implants include the static magnetic field, maximum spatial gradient, and maximum specific absorption rate (SAR) under which the device can be safely scanned. FDA would like public comment on whether this information is or is not sufficient to make an informed decision about whether it is safe or is not safe to scan a patient.
- FDA would like public comment on the challenges sites face in obtaining the specific conditions of use (i.e. the ''MR Conditional'' labeling) for medical implants and what is done when information about MRI compatibility is unavailable. For example, when presented with a patient with an implanted medical device, how is the identity of the implant definitively determined and how is MR labeling information obtained to make a decision of whether or not to scan the patient? If ''MR Conditional'' labeling cannot be found or the device cannot be identified, how is the decision of whether or not to scan a patient determined?

D. The Impact of Innovation on MRI Safety Concerns

- FDA would like comment from stakeholders on future technical developments and changing clinical practice scenarios that may affect the safety profile of MRI.

III. Transcripts

As soon as the transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857. A link to the transcripts will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select this public workshop from the posted events list), approximately 45 days after the public workshop.

Dated: September 13, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–24030 Filed 9–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Survey of Organ Donation Attitudes and Practices (OMB No. 0915–New)

The Division of Transplantation (DoT), Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), is planning to conduct a telephone survey of public knowledge, perceptions, opinion, and behaviors related to organ donation. Two key missions of the DoT are (1) to provide oversight for the Organ Procurement and Transplantation Network and policy development related to organ donation and transplantation, and (2) to implement efforts to increase public knowledge, attitudes, and behaviors related to organ donation. With a constantly growing deficit between the number of Americans needing donor organs (currently nearly 112,000) and the annual number of donors (14,505 in 2010), increasing the American public's willingness to donate becomes increasingly critical. Effective education and outreach campaigns need to be based on knowledge of the public's

attitudes and perceptions about, and perceived impediments to, organ donation. Two national surveys using nearly identical survey instruments to identify public views and behaviors related to organ donation were conducted in 1993 and 2005.

The proposed study will identify current organ donation views and practices of the American public and various population subgroups using a survey instrument similar to the two earlier studies in order to track changes over time. It will measure issues such as public knowledge about and attitudes toward organ donation, public commitment to or willingness to donate, impediments to public willingness to donate, and attitudes toward living donation, donation practices, policy issues, allocation policy, presumed consent, and financial incentives for donation. Demographic information also will be collected. The randomly drawn sample will consist of 3,250 adults (age 18 and over), including an oversample of Asians, Hispanics, African Americans, and Native Americans, and will be geographically representative of the United States. The survey instrument will be administered in English and Spanish languages through computer-assisted telephone interviews.

In addition to being useful to the DoT, especially in its donation outreach initiatives, results of this survey also will be of assistance to the donation and transplant community, DoT grantees and other research efforts, and to the Secretary's Advisory Committee on Organ Transplantation (ACOT) as it fulfills its charge to advise the Secretary of Health and Human Services on the numerous and often controversial issues related to donation and transplantation. In its first meeting, the ACOT suggested such a survey to gather information to inform both public education efforts and policy decisions on the issue of organ donation.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Telephone survey	3,250	1	3,250	0.3	975
Total	3,250	1	3,250	0.3	975

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: September 13, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–24121 Filed 9–19–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: November 8, 2011, 8:30 a.m. to 5 p.m. November 9, 2011, 8:30 a.m. to 5 p.m.

Place: Hotel Albuquerque at Old Town, 800 Rio Grande Boulevard, Northwest, Albuquerque, New Mexico 87104, Telephone: 505–843–6300, Fax: 505–842–8426.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

In addition, the Council will be holding a public hearing at which migrant farmworkers, community leaders, and providers will have the opportunity to testify before the Council regarding matters that affect the health of migrant farmworkers. The hearing is scheduled for Tuesday, November 8, 2011, from 1 p.m. to 4 p.m., at the Hotel Albuquerque at Old Town.

The Council meeting is being held in conjunction with the Midwest Stream Farmworker Health Forum sponsored by the National Center for Farmworker Health, which is being held in Albuquerque, New Mexico, November 10–12, 2011.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Gladys Cate, Office of Special Population Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Room 15–62, Maryland 20857; telephone (301) 594–0367.

Dated: September 13, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–24127 Filed 9–19–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Transition to Fatherhood: Fatherhood Trajectories and Consequences for Men.

Date: October 6, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard,Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive

Blvd., Room 5b01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24136 Filed 9–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the *Federal Advisory Committee Act,* as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Teleconference Review of Pre Clinical (R34) and Secondary Data Analysis (R03) Applications.

Dates: October 18, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review R03, K99.

Date: October 18, 2011.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Raj K. Krishnaraju, PhD, MS, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24135 Filed 9–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: October 12–13, 2011.

Time: 7:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Larry Pinkus, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Endocrinology and Metabolism.

Date: October 12, 2011.

Time: 11 a.m. to 5 p. m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Biology and Diseases of the Posterior Eye Study Section.

Date: October 24, 2011.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.

Date: October 24–25, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Avenue, Chicago, 160 East Huron Street, Chicago, IL 60611.

Contact Person: Richard Panniers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chronic Fatigue Syndromes,

Date: October 25–26, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lynn E. Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function E Study Section.

Date: October 25, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza—Old Town Alexandria, 901 N Fairfax Street, Alexandria, VA 22314.

Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24134 Filed 9–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Program Project: Biology in Cardiovascular Disease.

Date: October 11, 2011.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J Johnson, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Phase II Clinical Trials for Lung Diseases (UM1).

Date: October 13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stephanie L Constant, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24133 Filed 9–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Conte Centers for Basic and Translational Mental Health Research.

Date: October 21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Rebecca C. Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; National Research Service Award Institutional Research Training Grants (NRSA T32).

Date: November 2, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca C. Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NRSA Institutional Research Training.

Date: November 3, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Treatment Fidelity.

Date: November 8, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24132 Filed 9–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: October 13–14, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: October 13–14, 2011.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Grant Applications in Speech, Language, and Motor Function.

Date: October 18–19, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24130 Filed 9–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cardiovascular and Sleep Epidemiology Study Section, October 13, 2011, 8:30 a.m. to October 13, 2011, 5 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on September 7, 2011, 76 FR 55400–55402.

The meeting will be held October 6, 2011 from 8:30 a.m. to 7:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 14, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24144 Filed 9–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1104]

Notice of Availability of Draft Programmatic Environmental Assessment for the Nationwide Implementation of the Interagency Operations Centers

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of a Draft Programmatic Environmental Assessment (PEA) for the proposed nationwide implementation of the Interagency Operations Centers (IOC) Project.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before December 19, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1104 using any one of the following methods:

(1) *Federal Rulemaking 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 the 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, please contact CAPT Robert Wilbur, Coast Guard, telephone 202–475–3039 or e-mail *robert.s.wilbur@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the Draft PEA. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2010–1104), and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail 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,* insert ''USCG–2010–1104'' in the ''Keyword'' box. 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 them 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 the comments, PEA, and associated documents: To view the comments, PEA, and associated documents, go to *http://www.regulations.gov.* In the ''Keyword'' box, insert ''USCG–2010–1104'' and click ''Search.'' 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).

Basis and Purpose

The Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, was enacted to improve maritime and United States port security through enhanced layered defenses. Section 108 of the SAFE Port Act directs the establishment of IOCs at all high priority ports that ''utilize, as appropriate, the compositional and operations characteristics of existing centers'' and are ''organized to fit the security needs, requirements, and resources of the individual port area at which each is operating.''

The Coast Guard will satisfy this mandate through the development and transformation of approximately 35 existing Coast Guard Sector Command Centers (Sectors) into coordinated planning and operations centers.

The primary mission of this action is to enhance maritime security and interoperability, bringing together, federal, state, and local stakeholders in high-priority ports. Establishing IOCs will improve inter-agency information sharing and tactical coordination, which will aid the Coast Guard in preventing, deterring, and responding to threats within the nation's critical ports and waterways. The following table lists existing Sectors being considered for reconfiguration to IOCs.

ADDRESSES OF SECTOR LOCATIONS CONSIDERED FOR TRANSFORMATION TO IOC

Hampton Roads, 4000 Coast Guard Boulevard, Portsmouth, VA 23703–2199.	San Francisco, 1 Yerba Buena Island, San Francisco, CA 94130–9309.	Boston, 427 Commercial Street, Boston, MA 02109–1027.	Charleston, 196 Tradd St., Charleston, SC 29401–1817.
Tampa-St. Petersburg, 600 8th Avenue, SE, St. Petersburg, FL 33701–5099.	San Diego, 2710 Harbor Drive N., San Diego, CA 92101–1028.	New York, 212 Coast Guard Drive, Staten Island, NY 10305.	Sault Ste. Marie, 337 Water St., Sault Ste Marie, MI 49783–9501.
Los Angeles/Long Beach, 1001 S. Seaside Ave., Bldg. 20 San Pedro, CA 90731–0208.	Puget Sound, 1519 Alaskan Way, South Seattle, WA 98134–1192.	Baltimore, 2401 Hawkins Point Rd., Baltimore, MD 21226–1797.	Long Island, 120 Woodward Ave. New Haven, CT 06512–3698.
Ohio Valley, 600 Martin Luther King Jr., Mazzoli Federal Bldg., Rm 421 Louisville, KY 40202–2251.	Columbia River, 2185 SE Airport Rd, Warrenton, OR 97146–9693.	Delaware Bay, 1 Washington Avenue, Philadelphia, PA 19147–4395.	Mobile, South Broad St., Mobile, AL 36615.
Northern New England, 259 High St., South Portland, ME 04106–0007.	Corpus Christi, 8930 Ocean Dr., Corpus Christi, TX 78419–5220.	Buffalo, 1 Fuhrmann Boulevard, Buffalo, NY 14203–3189.	Jacksonville, 4200 Ocean St., Atlantic Beach, FL 2233–2416.
Southern New England, Little Harbor Rd., Woods Hole, MA 02543–1099.	Houston-Galveston, 9640 Clinton Dr., Houston, TX 77029–4328.	Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207–4380.	Juneau, 2760 Sherwood Lane, Suite 2A, Juneau, AK 99801–8545.
Lower Mississippi, 2 A W Wills Ave., Memphis, TN 38105–1502.	Key West, 100 Trumbo Rd., Key West, FL 33040–0005.	New Orleans, 201 Old Hammond Hwy, Metairie, LA 70005.	Anchorage, 510 L Street, Suite 100, Anchorage, AK 99501–1946.
Lake Michigan, 2420 S. Lincoln Memorial Dr., Milwaukee, WI 53207–1997.	Miami, 100 MacArthur Causeway, Rm. 201, Miami Beach, FL 33139–5101.	Guam, PSC 455 Box 176 FPO, AP 96540–1056.	San Juan, 5 Calle La Puntilla Final, San Juan, PR 00901–1800.
Upper Mississippi, 1222 Spruce St., Suite 7.103, St. Louis, MO 63103–2832.	Honolulu, 400 Sand Island Parkway, Honolulu, HI 96819–4398.	North Carolina, 2301 East Fort Macon Rd., Atlantic Beach, NC 28512–5633.	

The Coast Guard has prepared a Draft PEA in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations. The Coast Guard published a notice of intent to prepare this PEA in the **Federal Register** (75 FR 78722, Dec. 16, 2010).

Proposed Action

The Proposed Action consists of fully transforming 35 existing Sectors to function as IOCs over the next 12 years. This transformation is proposed to occur through upgrades in information management systems and sensor capability, and possibly by improving facilities at selected locations through renovation, leasing, or new construction. The Coast Guard plans to implement the IOC project, nationwide, in a series of four discrete segments. Segment 1 will provide each IOC location with an information management solution called WatchKeeper to integrate vessel targeting, operations, monitoring, and planning. Segment 2 will establish an integrated sensor management system by installing hardware and software at each IOC location. Segment 3 will be implemented through adding 1–15 new sensor systems at each IOC location to expand the existing sensor network. Segment 4 will involve upgrading the existing Sector facilities through renovation, leasing, or new construction at selected locations to IOC facilities. Each IOC will be tailored to the individual needs of the ports, and will be operated in coordination with multiple partner agencies and organizations including Federal agencies, state, tribal, and local law enforcement, and port authorities.

The Coast Guard has prepared this Draft PEA in accordance with Section 102(2)(c) of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), Department of Homeland Security Management Directive 023.1 (Environmental Planning Program), and Coast Guard National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, (COMDTINST M16475.1D). The PEA addresses the general environmental impacts of the Proposed Action and the No Action Alternative. The No Action Alternative will serve as a baseline against which to compare the potential impacts of the Proposed Action.

Two Alternatives to the Proposed Action were eliminated from further consideration in the PEA because they do not fully support the purpose or need of the IOC project. These Alternatives were to implement only Segments 1 and 2; and to implement only Segments 1, 2, and 3.

The PEA analyzes the potential environmental impacts associated with implementing Segments 1, 2, 3, and 4 of the Proposed Action, and fully transforming existing Sector locations into IOCs. The broad analysis of the PEA does not address the potential site-specific environmental impacts of the Proposed Action. If the analysis in the PEA does not adequately cover the site-specific actions required to construct, lease, or relocate IOC facilities, then the Coast Guard will tier follow-on Environmental Assessments and Categorical Exclusions as appropriate on a case-by-case basis.

We request comments from all interested parties to ensure that the full range and significance of issues related to the Proposed Action are identified.

This notice is issued under authority of 42 U.S.C. 4321, *et seq.,* and 40 CFR 1508.22

Dated: September 13, 2011.

Robert Wilbur,

Captain, U.S. Coast Guard, Project Manager, Interagency Operation Centers Project.

[FR Doc. 2011–24052 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0882]

International Maritime Organization Guidelines for Exhaust Gas Cleaning Systems for Marine Engines To Comply with Annex VI to MARPOL 73/78

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The United States Coast Guard, in consultation with the United States Environmental Protection Agency, will conduct a public meeting on the International Maritime Organization guidelines for exhaust gas cleaning systems for marine engines. The purpose of this meeting in Washington, DC, is to collect information on how to evaluate exhaust gas cleaning systems to determine under Annex VI regulation 4 of the International Convention for the Prevention of Pollution by Ships, 1973 as modified by the Protocol of 1978 (MARPOL) if such a system should be considered an equivalent that would be at least as effective in reducing sulfur oxide emissions as the requirements of MARPOL Annex VI regulation 14.

DATES: This public meeting will be held for 2 days beginning at 9 a.m. Eastern Time, on Wednesday, October 12, 2011, and ending at 3:30 p.m., Eastern Time on Thursday, October 13, 2011. The daily meeting schedule will be from 9 a.m. until 3:30 p.m. This meeting is open to the public. Comments and related material for our online docket must either be submitted via *http://www.regulations.gov* on or before October 27, 2011, or reach the Docket Management Facility by that date.

ADDRESSES: The public meeting will be held in Room 2501 of the United States Coast Guard Headquarters Transpoint building in Washington, DC. The Transpoint building is located at 2100 Second Street, Southwest, in Washington, DC 20953, approximately 1 mile from the Southwest-SEU Metro Station.

You may submit comments identified by docket number USCG–2011–0882 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: For additional information about this public meeting you may contact Mr. Wayne Lundy by telephone at 202–372–1379 or by e-mail at *Wayne.M.Lundy@uscg.mil.* If you have questions on viewing or submitting material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss guidelines and accompanying washwater discharge criteria developed by the International Maritime Organization (IMO) for exhaust gas cleaning systems for marine engines to remove sulfur oxide emissions. Annex VI regulation 4 of the International Convention for the Prevention of Pollution by Ships, 1973 as modified by the Protocol of 1978 (MARPOL), permits the use of equivalents that would be at least as effective in reducing emissions as required by MARPOL Annex VI regulations. MARPOL Annex VI regulation 14 sets requirements for sulfur oxide emissions. A copy of IMO Marine Environment Protection Committee Resolution MEPC.176(58), which contains the text of MARPOL Annex VI including regulations 4 and 14 is available in the docket for this notice. A copy of MEPC Resolution MEPC.184(59) which contains the 2009 Guidelines for Exhaust Gas Cleaning Systems is also available in the docket for this notice.

On July 21, 2008, the Maritime Pollution Prevention Act of 2008, Public Law 110–280, was enacted. This legislation amended the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901–1915. APPS, which defines ''MARPOL Protocol'' to include Annex VI, makes it unlawful to act in violation MARPOL Annex VI. *See* 33 U.S.C. 1901 and 1907. Working with other agencies, under 33 U.S.C. 1903, the Coast Guard is charged with administering and enforcing the MARPOL Protocol. A copy of 33 U.S.C. chapter 33, containing sections 1901–1915, is available in the docket.

Agenda of Meeting

The public meeting will cover:

(1) Potential approval process;

(2) Development of explicit test procedures;

(3) Inspection & verification of compliance;

(4) Consistency of the sludge from washwater;

(5) Proper disposal of sludge;

(6) Adequate reception facilities;

(7) Safety concerns;

(8) Training needs; and

(9) Recordkeeping.

The U.S. Coast Guard is specifically seeking information about testing procedures, preliminary results, processes for establishing certified laboratories, and other items relevant to emission standards regulation 14 and exhaust gas cleaning systems for marine engines.

Procedural

This meeting is open to the public. Please note that the public meeting has a limited number of seats and may close early if all business is finished. There will be audiovisual arrangements available for those interested in making presentations. Also, teleconferencing

will be available. Those interested in making presentations or teleconferencing should contact Mr. Wayne Lundy by telephone at 202–372–1379 or by e-mail at *Wayne.M.Lundy@uscg.mil.*

The IMO guidelines are contained in document MEPC.184(59). A copy of the IMO guidelines is available in the docket. A limited number of paper copies will be available at this meeting. Summaries of comments made, materials presented, and lists of attendees will be available on the docket at the conclusion of the meeting. To view comments and materials in the docket, go to *http://www.regulations.gov*, type the docket number ''USCG–2011–0882'' in the Keyword box, and press Enter. If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0882), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

You may submit comments and material to our online docket via *http://www.regulations.gov,* by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number ''USCG–2011–0882'' in the Keyword box, press Enter, go to the row with the notice of the meeting (or another submission you wish to comment on), and click on the ''Submit a Comment'' icon in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. 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).

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Wayne Lundy at 202–372–1379 or by e-mail at *Wayne.M.Lundy@uscg.mil* as soon as possible.

Public Meeting Location and Dates

As stated in the **DATES** and **ADDRESSES** sections, the Coast Guard will hold a public meeting October 12 and 13, 2011, at: United States Coast Guard Headquarters, Transpoint Building, Room 2501, 2100 Second Street, Southwest, Washington, DC 20953. Each meeting will be conducted from 9 a.m. until 3:30 p.m., with a planned lunch break for approximately 45 minutes at a convenient point each day. The meeting may close early if all business is finished.

Attendees will be required to provide a government-issued photo identification (for example, a driver's license) in order to gain admittance to the Coast Guard Headquarters building. The building is located approximately 1 mile from the Southwest-SEU Metro Station.

Dated: September 14, 2011.

J.G. Lantz,

U.S. Coast Guard, Director of Commercial Regulations and Standards.

[FR Doc. 2011–24138 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3331–EM; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 3 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 the State of Connecticut (FEMA–3331–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 1, 2011.

(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. 2011–24059 Filed 9–19–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 7 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 the State of North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 10, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Pender and Wayne Counties for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

Sampson County for Public Assistance, including direct federal assistance.

Gates, Hertford, Johnston, Northampton, Warren, and Washington Counties for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

(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. 2011–24060 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4024–DR; Docket ID FEMA–2011–0001]

Virginia; Amendment No. 1 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 the Commonwealth of Virginia (FEMA–4024–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 10, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 3, 2011.

The counties of Accomack, Caroline, Charles City, Chesterfield, Dinwiddie, Henrico, King George, King and Queen, King William, Mathews, Northumberland, Prince George, and Surry and the independent cities of Colonial Heights, Franklin, Petersburg, and Richmond for Public Assistance.

(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. 2011–24064 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 7 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 the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 8, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Columbia, Putnam, and Washington Counties for Individual Assistance.

Columbia, Putnam, and Washington Counties for Public Assistance, including direct Federal assistance.

(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. 2011–24075 Filed 9–19–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 5 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 the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 2, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 2, 2011.

(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. 2011–24077 Filed 9–19–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4012–DR; Docket ID FEMA–2011–0001]

Missouri; Amendment No. 2 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 the State of Missouri (FEMA–4012–DR), dated

August 12, 2011, and related determinations.

DATES: *Effective Date:* September 9, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 12, 2011.

Carroll, Cooper, Ray, and Saline Counties for Public Assistance.

Andrew, Atchison, Buchanan, Holt, Lafayette, and Platte Counties for Public Assistance (already designated for Individual Assistance).

(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. 2011–24074 Filed 9–19–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4023–DR; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 4 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 the State of Connecticut (FEMA–4023–DR), dated September 2, 2011, and related determinations.

DATES: *Effective Date:* September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 1, 2011.

(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. 2011–24062 Filed 9–19–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–5484–N–31]

Notice of Proposed Information Collection; Comment Request; Local Appeals to Single-Family Mortgage Limits

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 21, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Program Contact, Arlene Nunes, Director, Home Mortgage Insurance Division, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the *Paperwork Reduction Act* of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information

on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Local Appeals to Single-Family Mortgage Limits.

OMB Control Number, if applicable: 2502–0302.

Description of the need for the information and proposed use: HUD has allowed interested parties to submit appeals in support of higher loan amounts. HUD's current regulations for loan-limit appeals date back to the early 1980's. Section 203.18(b) of the Code of Federal Regulations (CFR) permits any party to request an alternative mortgage loan limit to the one established by the Secretary in any area of country at any time. The Federal Housing Administration originally issued Mortgagee Letter 95–27, dated June 2, 1995, which outlined the appeal process, and Mortgagee Letter 2007–01, dated January 3, 2007, subsequently re-emphasized the basic appeal process and added requirements for data used in non-disclosure states and an optional procedures for reviewing new construction sales data. At that time, there were no comprehensive, national data bases of home sale transactions. Appeals by interested parties were also an important part of the loan-limit determination process. Most often, requestors would provide lists of sales from local Multiple Listing Services, which were reviewed by local HUD field offices or, later, Homeownership Centers, for validity and use in updating loan limits.

Starting in 2008, with the passage of the *Economic Stimulus Act of 2008* (ESA), HUD developed a new centralized procedure for managing and updating FHA loan limits. This procedure took advantage of newly available national data sources that compile sale transaction information from county deed recorders, using those data to compute median prices. Area median prices are the fundamental factor used to calculate maximum mortgage amounts. Having this data negates the need for appeals in covered areas because HUD already has access to complete information on home sales. Since 2008, the availability of comprehensive data has increased to where in 2010 it was available to HUD for over 2,000 of the more than 3,200 counties and county-equivalent areas across the country. Counties for which these data are not readily available to HUD generally either have too few sale transaction to compute reliable median prices, or else are immaterial to the process because median prices are sufficiently below the level that would trigger eligibility for a ''high-cost area'' loan limits above the national floor. For thin-data counties, HUD uses indirect sources to compute median prices, relying instead upon a combination of information to develop best estimates of median prices/values that match the time period of the transaction data used for other counties.

Since these new procedures took effect in 2008, under suspension of published regulations, the number of appeals received and accepted by FHA has dropped to zero. For the 2010 loan limits, only one appeal was received, and that was rejected because HUD already had comprehensive sale price data for the subject county. For the 2011 loan limits, no appeals were received. As a result, the need for an appeals process to inform HUD of local home price trends is no longer necessary.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 119. The number of respondents is 17, which is based on the actual number of requests received since 2008. The number of responses is 17 and the frequency of response is one per appeal. The burden hour per response is 7. The Federal government burden has reduced over the past 3 years. In 2010, only one appeal was received but rejected due to HUD having sufficient data in support of loan limit. In 2011, no appeals were received.

Status of the proposed information collection: This is an extension of a currently approved collection. HUD is still proceeding with the request for renewal of the subject information collection pending OMB's review and approval of HUD's request to eliminate regulations on the appeal process in its entirety.

Authority: The *Paperwork Reduction Act of 1995,* 44 U.S.C., Chapter 35, as amended.

Dated: September 14, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2011–23970 Filed 9–19–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–5500–FA–23]

Announcement of Funding Awards for Fiscal Year 2011; Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the *Department of Housing and Urban Development Reform Act of 1989,* this document notifies the public of funding awards for the Fiscal Year (FY) 2011 Doctoral Dissertation Research Grant (DDRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral candidates complete dissertations on topics that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8226, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 402–3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The DDRG Program was created as a means of expanding the number of researchers conducting research on subjects of interest to HUD. Doctoral candidates can receive grants of up to $25,000 to complete work on their dissertations. Grants are awarded for a two-year period. The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Catalog of Federal Domestic Assistance number for this program is 14.517.

On May 24, 2011, a Notice of Funding Availability (NOFA) for this program was posted on Grants.gov announcing the availability of $400,000 in FY 2011 for the DDRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545). More information about the winners can be found at *http://www.oup.org.*

Dated: September 9, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

Attachment

List Of Awardees For Grant Assistance Under The Fiscal Year (FY) 2011 Doctoral Dissertation Research Grant Program Funding Competition, By Institution, Address, Grant Amount And Name Of Student Funded

1. Research Foundation/CUNY for the Graduate Center/CUNY, Dr. Leith Mullings, Research Foundation/CUNY for the Graduate Center/CUNY, 365 Fifth Avenue, New York, NY 10016. Grant: $24,997 to Karen Williams.

2. Loyola University, Dr. Marilyn Krogh, Loyola University, 1032 West Sheridan Road, Chicago, IL 60660. Grant: $25,000 to Julie Hilvers.

3. The George Washington University, Mr. Edward Berkowitz, The George Washington University, 2121 I Street, NW., Suite 601, Washington, DC 20052. Grant: $25,000 to Bell Clement.

4. Ohio State University, Dr. Phyllis Pirie, Ohio State University, 1960 Kenny Road, Columbus, OH 43210. Grant: $24,949 to Nancy Hood.

5. President and Fellows of Harvard University, Ms. Kathryn Edin, President and Fellows of Harvard University, 1350 Massachusetts Avenue, Cambridge, MA 02138. Grant: $25,000 to Eva Rosen.

6. New York University, Dr. Ingrid Gould Ellen, New York University, 665 Broadway, Suite 801, New York, NY 10112. Grant: $25,000 to Michael Gedal.

7. The Board of Trustees of the University of Illinois, Mr. David Perry, The Board of Trustees of the University of Illinois, 809 S. Marshfield Avenue, Chicago, IL 60612. Grant: $24,115 to Carrie Menendez.

8. Brandeis University, Mr. Thomas Shapiro, Brandeis University, 415 South Street, Waltham, MA 02454. Grant: $25,000 to Tanja Kubas-Meyer.

9. University of North Carolina at Chapel Hill, Mr. William Rohe, University of North Carolina at Chapel Hill, 104 Airport Drive, Ste. 2200 CB# 1350, Chapel Hill, NC 27599. Grant: $24,964 to Hye-Sung Han.

10. University of Maryland Baltimore, Ms. Julianne Oktay, University of Maryland Baltimore, 620 West Lexington Street, 4th Floor, Baltimore, MD 21201. Grant: $20,386 to Kathleen Powell.

11. The Regents of the University of California, Ms. Elizabeth Deakin, The Regents of the University of California, 2150 Shattuck Avenue, Suite 300, Berkeley, CA 94704. Grant: $24,907 to Carrie Makarewicz.

12. Loyola University, Mr. Philip Nyden, Loyola University, 1032 West Sheridan Road, Chicago, IL 60660. Grant: $25,000 to Reuben Miller.

13. The Board of the Regents of the University of Wisconsin System, Ms. Kris Olds, The Board of the Regents of the University of Wisconsin System, 21 N. Park Street, Suite 6401, Madison, WI 53715. Grant: $24,865 to Darrel Ramsey-Musolf.

14. Temple University, Mr. Jermey Mennis, Temple University, 1938 Liacouras Walk, 2nd Floor, Philadelphia, PA 19122. Grant: $25,000 to Megan Heckert.

15. Louisiana State University A & M College. Mr. Timothy Page, Louisiana State University A & M College, 202 Himes Hall, Baton Rouge, LA 70803. Grant: $25,000 to Mary Ellen Brown.

16. University of New Orleans, Dr. Renia Ehrenfeucht, University of New Orleans, 2000 Lakeshore Drive, New Orleans, LA 70148. Grant: $17,075 to Kelly Owens.

17. Research Foundation/CUNY for the Graduate Center/CUNY, Dr. Leith Mullings, Research Foundation/CUNY for the Graduate Center/CUNY, 365 Fifth Avenue, New York, NY 10016. Grant: $13,742 to Amy Starecheski.

[FR Doc. 2011–24037 Filed 9–19–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in, irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We request your comments on the proposed rate adjustments.

DATES: Interested parties may submit comments on the proposed rate adjustments on or before November 21, 2011.

ADDRESSES: All comments on the proposed rate adjustments must be in writing and addressed to: John Anevski, Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4655–MIB, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208–5480.

FOR FURTHER INFORMATION CONTACT: For details about a particular irrigation project, please use the tables in **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

SUPPLEMENTARY INFORMATION: The first table in this notice provides contact information for individuals who can give further information about the irrigation projects covered by this notice. The second table provides the current 2011 irrigation assessment rates, the proposed rates for the 2012 irrigation season, and proposed rates for subsequent years where these are available.

What is the meaning of the key terms used in this notice?

In this notice:

Administrative costs means all costs we incur to administer our irrigation projects at the local project level and is a cost factor included in calculating your operation and maintenance assessment. Costs incurred at the local project level do not normally include Agency, Region, or Central Office costs unless we state otherwise in writing.

Assessable acre means lands designated by us to be served by one of our irrigation projects, for which we collect assessments in order to recover costs for the provision of irrigation service. (See *total assessable acres.*)

BIA means the Bureau of Indian Affairs.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand-deliver your bill will be stated on it.

Costs means the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility. (See *administrative costs,*

operation costs, maintenance costs, and *rehabilitation costs*).

Customer means any person or entity to which we provide irrigation service.

Due date is the date on which your bill is due and payable. This date will be stated on your bill.

I, me, my, you and *your* means all persons or entities that are affected by this notice.

Irrigation project means a facility or portion thereof for the delivery, diversion, and storage of irrigation water that we own or have an interest in, including all appurtenant works. The term ''irrigation project'' is used interchangeably with irrigation facility, irrigation system, and irrigation area.

Irrigation service means the full range of services we provide customers of our irrigation projects. This includes our activities to administer, operate, maintain, and rehabilitate our projects in order to deliver water.

Maintenance costs means costs we incur to maintain and repair our irrigation projects and associated equipment and is a cost factor included in calculating your operation and maintenance assessment.

Operation and maintenance (O&M) assessment means the periodic charge you must pay us to reimburse costs of administering, operating, maintaining, and rehabilitating irrigation projects consistent with this notice and our supporting policies, manuals, and handbooks.

Operation or operating costs means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

Past due bill means a bill that has not been paid by the close of business on the 30th day after the due date as stated on the bill. Beginning on the 31st day after the due date, we begin assessing additional charges accruing from the due date.

Rehabilitation costs means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

Responsible party means an individual or entity that owns or leases land within the assessable acreage of one of our irrigation projects and is responsible for providing accurate information to our billing office and paying a bill for an annual irrigation rate assessment.

Total assessable acres means the total acres served by one of our irrigation projects.

Water delivery is an activity that is part of the irrigation service we provide our customers when water is available.

We, us, and *our* means the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov.*

Why are you publishing this notice?

We are publishing this notice to notify you that we propose to adjust our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, found at 25 CFR part 171. This regulation provides for the establishment and publication of the rates for annual irrigation assessments as well as related information about our irrigation projects.

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

When will you put the rate adjustments into effect?

We will put the rate adjustments into effect for the 2012 irrigation season and subsequent years where applicable.

How do you calculate irrigation rates?

We calculate annual irrigation assessment rates in accordance with 25 CFR 171.500 by estimating the annual costs of operation and maintenance at each of our irrigation projects and then dividing by the total assessable acres for that particular irrigation project. The result of this calculation for each project is stated in the rate table in this notice.

What kinds of expenses do you consider in determining the estimated annual costs of operation and maintenance?

Consistent with 25 CFR 171.500, these expenses include the following:

(a) Salary and benefits for the project engineer/manager and project employees under the project engineer/manager's management or control;

(b) Materials and supplies;

(c) Vehicle and equipment repairs;

(d) Equipment costs, including lease fees;

(e) Depreciation;

(f) Acquisition costs;

(g) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation facility infrastructure;

(h) Maintenance of a vehicle and heavy equipment replacement fund;

(i) Systematic rehabilitation and replacement of project facilities;

(j) Contingencies for unknown costs and omitted budget items; and

(k) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

When should I pay my irrigation assessment?

We will mail or hand-deliver your bill notifying you (a) The amount you owe to the United States and (b) when such amount is due. If we mail your bill, we will consider it as being delivered no later than 5 business days after the day we mail it. You should pay your bill by the due date stated on the bill.

What information must I provide for billing purposes?

All responsible parties are required to provide the following information to the billing office associated with the irrigation project where you own or lease land within the project's assessable acreage or to the billing office associated with the irrigation project with which you have a carriage agreement:

(1) The full legal name of person or entity responsible for paying the bill;

(2) An adequate and correct address for mailing or hand delivering our bill; and

(3) The taxpayer identification number or social security number of the person or entity responsible for paying the bill.

Why are you collecting my taxpayer identification number or social security number?

Public Law 104–134, the Debt Collection Improvement Act of 1996,

requires that we collect the taxpayer identification number or social security number before billing a responsible party and as a condition to servicing the account.

What happens if I am a responsible party but I fail to furnish the information required to the billing office responsible for the irrigation project within which I own or lease assessable land or for which I have a carriage agreement?

If you are late paying your bill because of your failure to furnish the required information listed above, you will be assessed interest and penalties as provided below, and your failure to provide the required information will not provide grounds for you to appeal your bill or any penalties assessed.

What can happen if I do not provide the information required for billing purposes?

We can refuse to provide you irrigation service.

If I allow my bill to become past due, could this affect my water delivery?

If we do not receive your payment before the close of business on the 30th day after the due date stated on your bill, we will send you a past due notice. This past due notice will have additional information concerning your rights. We will consider your past due notice as delivered no later than 5 business days after the day we mail it. We have the right to refuse water delivery to any irrigated land for which the bill is past due. We can continue to refuse water delivery until you pay your bill or make payment arrangements to which we agree. We follow the procedures provided in 31 CFR 901.2, ''Demand for Payment,'' when demanding payment of your past due bill.

Are there any additional charges if I am late paying my bill?

Yes. We will assess you interest on the amount owed, using the rate of interest established annually by the Secretary of the United States Treasury (Treasury) to calculate what you will be assessed (31 CFR 901.9(b)). You will not be assessed this charge until your bill is past due. However, if you allow your bill to become past due, interest will accrue from the original due date, not the past due date. Also, you will be charged an administrative fee of $12.50 for each time we try to collect your past due bill. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of six percent (6%) per year, which will accrue from the date your bill initially became past due. As a Federal agency, we are required to charge interest, penalties, and administrative costs on debts owed to us pursuant to 31 U.S.C. 3717 and 31 CFR 901.9, ''Interest, penalties, and administrative costs.''

What else will happen to my past due bill?

If you do not pay your bill or make payment arrangements to which we agree, we are required to send your past due bill to the Treasury for further action. Under the provisions of 31 CFR 901.1, ''Aggressive agency collection activity,'' we must send any unpaid annual irrigation assessment bill to Treasury no later than 180 days after the original due date of the bill.

Who can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project/agency contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone: (503) 231–6702.	
Fort Hall Irrigation Project	Dean Fox, Superintendent, Fort Hall Agency, P.O. Box 220, Fort Hall, ID 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Edwin Lewis, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Ed Parisian, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Stephen Pollock, Superintendent, Greg Tatsey, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation Project Manager.
Crow Irrigation Project	Vianna Stewart, Superintendent, Vacant, Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent, (406) 638–2863, Irrigation Project Manager.
Fort Belknap Irrigation Project	Cliff Hall, Superintendent, Vacant, Irrigation Project Manager, (Project operations & management contracted to Tribes), R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent, (406) 353–8454, Irrigation Project Manager (Tribal Office).
Fort Peck Irrigation Project	Vacant, Superintendent, P.O. Box 637, Poplar, MT 59255, Huber Wright, Acting Irrigation Project Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation Project Manager.
Wind River Irrigation Project	Ed Lone Fight, Superintendent, Vacant, Irrigation Project Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent, (307) 332–2596, Irrigation Project Manager.
Southwest Region Contacts	
William T. Walker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	John Waconda, Superintendent, Reginald Howe, Irrigation Systems Operator, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Engineer.

Project name	Project/agency contacts
Western Region Contacts	
Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 N. Central Ave., 4th Floor Mailroom, Phoenix, Arizona 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Janice Staudte, Superintendent, Ted Henry, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, 1555 Shoshone Circle, Elko, NV 89801, Telephone: (775) 738–0569.
Fort Yuma Irrigation Project	Irene Herder, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202.
San Carlos Irrigation Project Joint Works.	Ferris Begay, Acting Project Manager, Clarence Begay, Irrigation Manager, P.O. Box 250, Coolidge, AZ 85228, Telephone: (520) 723–6203.
San Carlos Irrigation Project Indian Works.	Cecilia Martinez, Superintendent, Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, P.O. Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3326, Telephone: (520) 562–3372.
Uintah Irrigation Project	Dinah Peltier, Acting Superintendent, Dale Thomas, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, Telephone: (435) 722–4341.
Walker River Irrigation Project	Athena Brown, Superintendent, 311 E. Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

What irrigation assessments or charges are proposed for adjustment by this notice?

The rate table below contains the current rates for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. The table also contains the proposed rates for the 2012 season and subsequent years where applicable. An asterisk immediately following the name of the project notes the irrigation projects where rates are proposed for adjustment.

Project name	Rate category	Final 2011 rate	Proposed 2012 rate
Fort Hall Irrigation Project*	Basic per acre	$42.00	$45.50
	Minimum Charge per tract	31.50	32.50
Fort Hall Irrigation Project—Minor Units*	Basic per acre	22.50	23.50
	Minimum Charge per tract	31.50	32.50
Fort Hall Irrigation Project—Michaud*	Basic per acre	43.00	45.00
	Pressure per acre	59.50	62.00
	Minimum Charge per tract	31.50	32.50
Wapato Irrigation Project—Toppenish/Simcoe Units*	Minimum Charge for per bill	17.00	20.00
	Basic per acre	17.00	20.00
Wapato Irrigation Project—Ahtanum Units*	Minimum Charge per bill	17.00	20.00
	Basic per acre	17.00	20.00
Wapato Irrigation Project—Satus Unit*	Minimum Charge for per bill	63.00	65.00
	"A" Basic per acre	63.00	65.00
	"B" Basic per acre	70.00	70.00
Wapato Irrigation Project—Additional Works	Minimum Charge per bill	67.00	67.00
	Basic per acre	67.00	67.00
Wapato Irrigation Project—Water Rental	Minimum Charge	72.00	72.00
	Basic per acre	72.00	72.00

ROCKY MOUNTAIN REGION RATE TABLE

Project name	Rate category	Final 2011 rate	Proposed 2012 rate
Blackfeet Irrigation Project	Basic-per acre	$19.00	$19.00
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units).*	Basic-per acre	22.80	23.30
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units).*	Basic-per acre	22.50	23.00
Crow Irrigation Two Leggins Drainage District	Basic-per acre	2.00	2.00
Fort Belknap Irrigation Project	Basic-per acre	14.75	14.75
Fort Peck Irrigation Project	Basic-per acre	24.70	24.70
Wind River Irrigation Project	Basic-per acre	20.00	20.00
Wind River Irrigation Project—LeClair District* (see Note #1).	Basic-per acre	21.00	20.00
Wind River Irrigation Project—Crow Heart Unit	Basic-per acre	14.00	14.00
Wind River Irrigation Project—Riverton Valley Irrigation District.	Basic-per acre	16.00	16.00

SOUTHWEST REGION RATE TABLE

Project name	Rate category	Final 2011 rate	Proposed 2012 rate
Pine River Irrigation Project	Minimum Charge per tract	$50.00	$50.00
	Basic-per acre	15.00	15.00

WESTERN REGION RATE TABLE

Project name	Rate category	Final 2011 rate	Proposed 2012 rate	Proposed 2013 rate
Colorado River Irrigation Project* ..	Basic per acre up to 5.75 acre-feet	54.00	54.00	To be determined.
	Excess Water per acre-foot over 5.75 acre-feet.	17.00	17.00	
Duck Valley Irrigation Project	Basic per acre	5.30	5.30	
Fort Yuma Irrigation Project (See Note #2).	Basic per acre up to 5.0 acre-feet	86.00	86.00	
	Excess Water per acre-foot over 5.0 acre-feet.	14.00	14.00	
	Basic per acre up to 5.0 acre-feet (Ranch 5).	86.00	86.00	
San Carlos Irrigation Project (Joint Works)* (See Note #3).	Basic per acre	25.00	30.00	$30.00.
	Proposed 2012–2013 Construction Water Rate Schedule:			
		Off project construction	On project construction—gravity water	On project construction—pump water
	Administrative Fee	$300.00	$300.00	$300.00.
	Usage Fee	$250.00 per month.	No Fee	$100.00 per acre-foot.
	Excess Water Rate†	$5 per 1000 gal.	No charge	No charge.
	† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.			
San Carlos Irrigation Project (Indian Works)* (See Note #4).	Basic per acre	$68.00	$73.00	To be determined.
Uintah Irrigation Project	Basic per acre	15.00	16.00	
	Minimum Bill	25.00	25.00	
Walker River Irrigation Project*	Indian per acre	22.00	25.00	
	Non-Indian per acre	22.00	25.00	

* Notes irrigation projects where rates are proposed for adjustment.

Note #1—The O&M rate varies yearly based upon the budget submitted by the LeClair District.

Note #2—The O&M rate for the Fort Yuma Irrigation Project has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The BOR rate for 2012 is yet to be determined. The second component is for the O&M rate established by BIA to cover administrative costs including billing and collections for the Project. The 2012 BIA rate remains unchanged at $7.00/acre. The rates shown include the 2011 Reclamation rate and the 2012 BIA rate. The rates shown include the estimated FY 2012 rate.

Note #3—The 2012 rate was established by final notice in the **Federal Register** on May 9, 2011 (Vol. 76 No. 89, page 26759). In addition, a Construction Water Rate Schedule for the San Carlos Irrigation Project—Joint Works is now being formally established. The rate schedule establishes the fees assessed for use of irrigation water for non-irrigation purposes.

Note #4—The 2012 O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is the O&M rate established by the San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; this rate is proposed to be $35 per acre. The second component is for the O&M rate established by the San Carlos Irrigation Project—Joint Works and is determined to be $30.00 per acre. The third component is the O&M rate established by the San Carlos Irrigation Project Joint Control Board and is proposed to be $8 per acre.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

To fulfill its consultation responsibility to tribes and tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and

increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA-owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $130 million per year. The rate adjustments do not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

Civil Justice Reform (Executive Order 12988)

In issuing this rule, the Department 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.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires December 31, 2012.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Information Quality Act

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. No. 106–554).

Dated: September 9, 2011.

Michael Black,

Director, Bureau of Indian Affairs.

[FR Doc. 2011–24057 Filed 9–19–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK920000–L14100000–BJ0000]

Notice of Filing of Plats of Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Notice of Filing of Plats of Survey; Alaska.

Survey Desriptions: The plat and field notes, representing the corrective dependent resurvey of the Second Guide Meridian East, along a portion of the west boundary of Township 7 North, Range 9 East, the corrective dependent resurvey of the south boundary of the Steese National Conservation Area (north unit) as defined by the 1987 survey of Townships 7 North, Ranges 8 and 9 East and the survey of Tract 37, Township 7 North, Range 9 East, accepted July 18, 2011, for Group No. 444, Alaska.

The plat of survey of U.S. Survey No. 13984, Alaska, in 17 sheets, representing the monumented centerline of the Pinnell Mountain Trail and 2 Lots with associated trail improvements thereon, is situated northerly of the Steese Highway, between Twelvemile Summit (Milepost 86) and Eagle Summit (Milepost 107), approximately 75 miles northeasterly of Fairbanks, within Township 7 North, Range 9 East and Townships 8 North, Ranges 9, 10 and 11 East, of the Fairbanks Meridian, Alaska, accepted July 18, 2011, for U.S. Survey No. 13984, Alaska.

DATES: The plat of survey described above is scheduled to be officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, October 20, 2011.

ADDRESSES: Bureau of Land Management, Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Michael H. Schoder, Chief Cadastral Surveyor, Division of Cadastral Survey, BLM–Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599; Tel: 907–271–5481; fax: 907–271–4549; e-mail: *mschoder@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, seven 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 survey plat(s) and field notes will be available for inspection in the Public Information Center, Alaska State Office, Bureau of Land Management, 222 West 7th Avenue, Anchorage, Alaska 99513–7599; telephone (907) 271–5960. Copies may be obtained from this office for a minimum recovery fee.

If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against this survey must file a written response with the Alaska State Director, Bureau of Land Management, stating that they wish to protest.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A statement of reasons for a protest may be filed with the notice of protest to the State Director; the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

Authority: 43 U.S.C. 3; 53.

Dated: August 5, 2011.

Michael H. Schoder,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2011–24107 Filed 9–19–11; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–313, 314, 317, and 379 (Third Review)]

Brass Sheet and Strip From France, Germany, Italy, and Japan; Scheduling of a Full Five-Year Review Concerning the Antidumping Duty Order on Brass Sheet and Strip From France, Germany, Italy, and Japan

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the *Tariff Act of 1930* (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on brass sheet and strip from France, Germany, Italy, and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: September 12, 2011.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 2011, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (76 FR 35910, June 20, 2011). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on January 6, 2012, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on January 31, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 23, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 24, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 18, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 10, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before February 10, 2012. On March 12, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 14, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of

sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the *Tariff Act of 1930;* this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: September 14, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–24042 Filed 9–19–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 14, 2011, a proposed Consent Decree in *United States* v. *Illinois Central Railroad Company,* Civil Action No. 2:11–cv–02790, was lodged with the United States District Court for the Western District of Tennessee.

In this action the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), sought from the Illinois Central Railroad Company, (a) performance of the remedial design and the remedial action to address releases and threatened releases of hazardous substances at the Illinois Central Railroad Company (Johnston Yard) Superfund Alternative Site, located in Memphis, Shelby County, Tennessee (''the Site''), and (b) reimbursement of costs incurred and to be incurred by the United States for response activities undertaken and to be undertaken at the Site. The parties have reached a proposed settlement that requires Illinois Central Railroad Company to (a) perform the remedial design and the remedial action for the Site as provided in EPA's Record of Decision for the Site, and (b) to reimburse costs incurred and to be incurred by the United States in connection with the Site. The major components of the remedy include extraction of diesel phase separated hydrocarbon from the groundwater, followed by enhanced bioremediation as necessary, monitoring, and institutional controls to limit Site uses until cleanup goals are reached.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Illinois Central Railroad Company,* D.J. Ref. 90–11–3–10095.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $123.00 (for a copy inclusive of appendices) or $23.00 (for a copy exclusive of appendices) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–24117 Filed 9–19–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This **Federal Register** Notice notifies the public that MSHA has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web Site at *http://www.msha.gov/indexes/petition.htm.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances at 202–693–9475 (Voice), *fontaine.roslyn@dol.gov* (E-mail), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2008–053–C.
FR Notice: 73 FR 80435 (December 31, 2008).
Petitioner: South Central Coal Co., Inc. (formerly Heidtman Mining, LLC), 22279 US Hwy 271, Spiro, Oklahoma 74959.
Mine: Sebastian Mine, MSHA I.D. No. 03–01736, located in Sebastian County, Arkansas.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2009–005–C.
FR Notice: 74 FR 23747 (May 20, 2009).
Petitioner: Pennacle Mining Company, LLC, P.O. Box 338, Pineville, West Virginia 24874.
Mine: Pinnacle Mine, MSHA I.D. No. 46–01816, located in Wyoming County, West Virginia.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2009–006–C.
FR Notice: 74 FR 23748 (May 20, 2009).
Petitioner: Spartan Mining Company, 300 Kanawha Boulevard, East, P.O. Box 271, Charleston, West Virginia 25321–0273.
Mine: Road Fork #51 Mine, MSHA I.D. No. 46–01544, located in Wyoming County, West Virginia.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2009–039–C.
FR Notice: 74 FR 63414 (December 3, 2009).
Petitioner: Consol Pennsylvania Coal Company, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.
Mine: Enlow Fork Mine, MSHA I.D. No. 36–07416, located in Washington County, Pennsylvania.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2009–040–C.
FR Notice: 74 FR 63414 (December 3, 2009).
Petitioner: Consol Pennsylvania Coal Company, Consol Energy Drive, Canonsburg, Pennsylvania 15317.
Mine: Bailey Mine, MSHA I.D. No. 36–07230, located in Green County, Pennsylvania.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2009–057–C.
FR Notice: 75 FR 3259 (January 20, 2010).
Petitioner: Prairie State Generating Company, LLC, 4274 County Highway 12, Marissa, Illinois 62257.
Mine: Lively Grove Mine, MSHA I.D. No. 11–03193, located in Washington County, Illinois.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2010–034–C.
FR Notice: 75 FR 57298 (September 20, 2010).
Petitioner: Four O Mining Corporation, P.O. Box 148, Vansant, Virginia 24656.
Mine: No. 10 Mine, MSHA I.D. No. 44–07217, located in Dickenson County, Virginia.
Regulation Affected: 30 CFR 75.1101–2 (Installation of deluge-type sprays)

• *Docket Number:* M–2010–035–C.
FR Notice: 75 FR 75499 (December 3, 2010).
Petitioner: San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421–0561.
Mine: San Juan Mine 1, MSHA I.D. No. 29–02170, located in San Juan County, New Mexico.
Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

• *Docket Number:* M–2010–038–C.
FR Notice: 75 FR 81313 (December 27, 2010).
Petitioner: Consol Pennsylvania Coal Company, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.
Mine: Enlow Fork Mine, MSHA I.D. No. 36–07416, located in Washington County, Pennsylvania.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable (trailing) cables and cords).

• *Docket Number:* M–2010–039–C.
FR Notice: 75 FR 81314 (December 27, 2010).
Petitioner: Consol Pennsylvania Coal Company, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.
Mine: Bailey Mine, MSHA I.D. No. 36–07230, located in Green County, Pennsylvania.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable (trailing) cables and cords).

• *Docket Number:* M–2010–040–C.
FR Notice: 76 FR 16641 (March 24, 2011).
Petitioner: Kingston Mining, Inc., Route 1, Box 76–C, Scarbro, West Virginia 25917.
Mine: Kingston No. 1 Mine, MSHA I.D. No. 46–08625, located in Fayette County, West Virginia.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2010–045–C.
FR Notice: 76 FR 2723 (January 14, 2011).
Petitioner: Rhino Eastern, LLC, P.O. Box 260, Bolt, West Virginia 25817.
Mine: Eagle No. 1 Mine, MSHA I.D. No. 46–08758, located in Raleigh County, West Virginia.
Regulation Affected: 30 CFR 1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2010–046–C.
FR Notice: 76 FR 2723 (January 14, 2011).
Petitioner: Cobra Natural Resources, LLC, P.O. Box 40, Wharncliffe, West Virginia 25651.
Mine: Mountaineer Alma A Mine, MSHA I.D. No. 46–08730, located in Mingo County, West Virginia.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2010–048–C.
FR Notice: 76 FR 2724 (January 14, 2011).
Petitioner: Canyon Fuel Company, LLC, 597 South S.R. 24, Salina, Utah 84654.
Mine: Sufco Mine, MSHA I.D. No. 42–00089, located in Sevier County, Utah.
Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

• *Docket Number:* M–2011–001–M.
FR Notice: 76 FR 16643 (March 24, 2011).
Petitioner: Carmeuse Industrial Sands, 1000 Oglebay Norton Drive, P.O. Box 429, Brady, Texas 76825.
Mine: Brady Plant, MSHA I.D. No. 41–01371, located in McCulloch County, Texas.
Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Dated: September 15, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–24096 Filed 9–19–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Automatic Fire Sensor and Warning Device Systems; Examination and Test Requirements

ACTION: Notice of request for public comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of an existing information collection, OMB Control Number 1219–0145. This information collection was originally titled *Safety Standards Regarding Technical Study Panel*

Recommendations on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining. OMB 1219–0145 has been renamed *Automatic Fire Sensor and Warning Device Systems; Examination and Test Requirements* to reflect that the information collection is only for extending the approval of the information collection related to 30 CFR §§ 75.1103–8(b) and (c). MSHA expects to subsume these provisions into OMB 1219–0054, Fire Protection (Underground Coal Mines) when that package is renewed in January 2013. No provisions will then remain in OMB 1219–0145 and the package will be discontinued.

Other provisions of the original OMB 1219–0145 package have been subsumed into existing information collection packages as follows:

- OMB 1219–0009 subsumed § 48.27(a) *Training of miners assigned to a task* in July 2011;
- OMB 1219–0073 subsumed § 75.1103–5(a)(2)(ii) *Automatic fire sensor and warning device systems* and the package is at OMB for its 3-year review;
- OMB 1219–0088 subsumed §§ 75.350(a)(2), 75.350(b), 75.350(b)(7), 75.350(b)(8), 75.350(d)(1), and 75.350(e)(1)(v) *Belt air course ventilation;* § 75.351(e)(1)(v) *Atmospheric monitoring systems (AMS);* §§ 75.370(a)(3) and (f) *Mine ventilation plan submission and approval;* §§ 75.371(jj), 75.371(mm), 75.371(nn), and 75.371(yy) *Mine ventilation plan contents;* § 75.380(f)(1) *Escapeways; bituminous and lignite mines;* § 75.381(e) *Escapeways; anthracite mines;* and § 75.1103–5(a) *Automatic fire warning devices; actions, response* in October 2010;
- OMB 1219–0127 subsumed § 75.156 *AMS operator, qualifications* and the package is at OMB for its 3-year review.

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal and state agencies with an opportunity to comment on proposed or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)].

This program helps ensure that requested information collections are in formats appropriate to the mining community, that reporting is minimal, collection instruments are clearly understood, and that the impact of collection requirements can be properly assessed.

DATES: All comments must be received or postmarked by midnight Eastern Standard Time November 21, 2011.

ADDRESSES: Comments must be identified with ''OMB Control Number 1219–00145'' and may be sent to MSHA by any of the following methods:

- *Federal E–Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441. Include ''OMB 1219–00145'' in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

Information Collection Requirements: Comments concerning the information collection requirements of this proposed rule must be clearly identified with ''OMB 1219–00145'' and sent to both the Office of Management and Budget (OMB) and MSHA.

- Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA.
- Comments to MSHA may be sent by any of the methods listed above for comments on the public comment version of this information collection package.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *fontaine.roslyn@dol.gov* (e-mail); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The requirements related to OMB 1219–0145 are intended to help protect miners by assuring that MSHA inspectors can verify that automatic fire sensor and warning device systems are maintained and calibrated and will function properly when needed. Technical advances have made it practicable to automatically detect fires in mines and to warn miners, helping prevent deaths when a fire occurs. MSHA requires mine operators to ensure these protective sensors and devices operate as designed and contribute to improved miner safety.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of information collection related to automatic sensing systems and warning devices. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address 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) to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs'', and then selecting ''Fed Reg Docs.''

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Automatic Fire Sensor and Warning Device Systems; Examination and Test Requirements.

OMB Number: 1219–0145.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR part 75.

Total Respondents: 890.

Frequency: Weekly.

Total Responses: 8,896.

Estimated Total Burden Hours: 1,818 hours.

Estimated Total Burden Cost: $154,785.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of

Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 15, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–24095 Filed 9–19–11; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–081)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, October 13, 2011, 2 p.m. to 4 p.m., Local Time.

ADDRESSES: This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–469–3015, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number 992 537 420, and password *PSS@Oct13.*

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Status of Fiscal Year 2012 Budget and Impacts

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: September 14, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–24129 Filed 9–19–11; 8:45 am]

BILLING CODE P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 11:00 a.m., Tuesday, September 27, 2011.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. CALL TO ORDER
II. Approval of the Annual Board of Directors Minutes
III. Approval of the Special Board of Directors Minutes
IV. Approval of the Corporate Administration Committee Minutes
V. Approval of the Finance, Budget and Program Committee Minutes
VI. Approval of the Audit Committee Minutes
VII. Executive Session on Litigation and Budget Issues
VIII. Communication of Internal Audit Reports to External Parties
IX. FY 2012 Budget
X. Financial Report
XI. Management Report
XII. Corporate Scorecard
XIII. Strategic Plan Implementation
XIV. National Foreclosure Mitigation Counseling (NFMC) & EHLP
XV. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2011–24161 Filed 9–16–11; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0216]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 25, 2011 to September 7, 2011. The last biweekly notice was published on September 6, 2011 (76 FR 55125).

ADDRESSES: Please include Docket ID NRC–2011–0216 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0216. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* 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.

You can access publicly available documents related to this notice using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–

F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0216.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and

documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using
E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–

415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 20, 2011.

Description of amendment request: The proposed amendment would modify the Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS) Technical Specifications (TS) 5.5.8, ''Steam Generator (SG) Program,'' to modify the special visual inspection frequency requirements. Specifically, TS 5.5.8.g requires visual inspection of the secured internal auxiliary feedwater header, header to shroud attached welds, and external header thermal sleeves. The proposed amendment would replace the time-based frequency requirement with a condition-based inspection requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This amendment request modifies the frequency requirements for performing visual inspections of the secured internal auxiliary feedwater (AFWH), the header to shroud attachments welds, and the external header thermal sleeves. Previous AFWH repairs adhered to applicable code requirements, and steam generator modifications to install an external AFWH were implemented using an approved design change process. The steam generator's safety-related and seismic design requirements did not change. The auxiliary feedwater system's safety-related, seismic and accident mitigation requirements did not change.

Historically acceptable TS 5.5.8.g visual inspection results for both steam generators indicate no degradation of the internal AFWH and its attachment welds, or of the external header thermal sleeves. Historically acceptable TS 5.5.8.d.5 eddy current inspections indicate no degradation of the steam generator peripheral tubes due to the internal AFWH. The acceptable eddy current inspections were last completed on both steam generators during the 2010 refueling outage, and will continue to be performed until the steam generators are replaced. For steam generator 1–B, the last TS 5.5.8.g special visual inspection was completed during the 2010 refueling outage, and no other required TS 5.5.8.g special visual inspections remain before the steam generator's scheduled replacement in 2014. For steam generator 2–A, the last TS 5.5.8.g special visual inspection was performed during the 1998 refueling outage, and only one TS 5.5.8.g special visual inspection remains before the end of the current inservice inspection interval (September 20, 2012).

The visual inspection trend indicates that degradation of the secured internal AFWH and its attachment welds is not expected to be identified, should the required TS 5.5.8.g inspection of the steam generator 2–A be performed in 2012, and that is degradation is not expected to occur during the remaining planned service life of both steam generators before their scheduled replacements in 2014.

The eddy current inspection trend indicates that the steam generator tubes, a part of the reactor coolant system, remain unaffected by the internal AFWHs. Significant changes in the gap between the steam generator peripheral tubes and the secured AFWHs is not expected to be indentified when the next TS 5.5.8.d.5 eddy current inspections of steam generators 1–B and 2–A are performed in 2012, and that significant gap degradation is not expected to occur during the remaining planned service life of both steam generators before their scheduled replacements in 2014.

Should significant damage to a steam generator peripheral tube occur due to direct contact with the internal AFWH, the postulated occurrence would be bounded by the existing Updated Safety Analysis Report (USAR) Chapter 15, Section 15.4.2, for the steam generator tube rupture accident analysis.

Modifying the TS 5.5.8.g inspection frequency requirement will not significantly increase the probability of an accident previously evaluated because historically acceptable inspection results and trend indicate that degradation of the secured internal AFWHs is not expected to occur during the remaining service life of both steam generators.

Modifying the TS 5.5.8.g inspection frequency requirement will cause a change to any dose analyses associated with the USAR Chapter 15 accidents because accident mitigation functions and requirements remain unchanged.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed amendment create the possibility of new or different kind of accident from any accident previously evaluated?

Response: No.

This amendment request modifies the frequency requirements for performing visual inspections of the secured internal AFWH, the header to shroud attachment welds, and the external header thermal sleeves. This request does not change the design function of the reactor coolant system, the steam generators, the AFWS, or the way the systems and plant are operated and maintained.

Therefore, the proposed change does not create the possibility of new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This amendment request modifies the frequency requirements for performing visual inspections of the secured internal AFWH, the header to shroud attachment welds, and the external header thermal sleeves. Historically acceptable TS 5.5.8.g visual inspection results for both steam generators indicate no degradation of the internal AFWH and its attachment welds, or of the external header thermal sleeves. Historically acceptable TS 5.5.8.d.5 eddy current inspections indicate no degradation of the steam generator [special interest group] peripheral tubes due to the internal AFWH.

The visual and eddy current inspection trends indicate that degradation of the AFWH, or significant changes in the gap between the steam generator peripheral tubes and the secured AFWHs, is not expected to occur during the remaining service life of both steam generators.

The request does not involve or affect the fuel cladding or the containment. The steam generators tubes, a part of the reactor coolant system, remain unaffected based on the historically acceptable 5.5.8.d.5 eddy current inspection results and trend. This request does not involve a physical change to the plant, methods, of plant operation, or maintenance of equipment important to safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, FENOC concludes that the proposed amendment does not involve a significant consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Jacob I. Zimmerman.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: August 10, 2011.

Description of amendment request: The proposed amendment request would revise Technical Specification (TS) 3.8.1 ''AC [Alternating Current] Sources—Operating.'' It would modify Surveillance Requirement (SR) Notes associated with SR 3.8.1, SR 3.8.1.9, SR 3.8.1.10, SR 3.8.1.11, SR 3.8.1.13, SR 3.8.1.16, SR 3.8.1.18, and SR 3.8.1.19. The proposed amendment request would change the Unit 1 TS 3.8.1 to

permit performance of the Unit 2 integrated safeguards test without requiring Unit 1 to be shut down.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed changes do not require physical changes to plant systems, structures, or components. The DGs [diesel generators] and their associated emergency loads are accident mitigating features. As such, testing of the DGs is not associated with a potential accident-initiating mechanism. Therefore, the changes do not affect accident or transient initiation or consequences.

The probability or consequences of previously evaluated accidents will not be significantly affected by the revised Surveillance Notes, because a sufficient number of onsite AC power sources will continue to remain available to perform the accident mitigation functions associated with the DGs, as assumed in the accident analyses.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes would not require any new or different accidents to be postulated, since no changes are being made to the plant that would introduce any new accident causal mechanisms. This license amendment request does not impact any plant systems that are potential accident initiators; nor does it have any significantly adverse impact on any accident mitigating systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the permanent plant design, including instrument set points, nor does it change the assumptions contained in the safety analyses. The DG alternate AC system and other required safety systems are designed with sufficient redundancy such that a DG from the non-operating unit may have surveillance and testing performed while the affected unit is operating. The proposed changes do not impact the redundancy or availability requirements of offsite power supplies or change the ability of the plant to cope with station blackout events.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Stephen J. Campbell.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: August 27, 2010, as supplemented by letters dated February 11 and May 25, 2011.

Brief description of amendment: The amendments revised the feedwater line break with loss of offsite power and single failure (FWLB/LOP/SF) event analysis reported in Chapter 15, Section 15.2.8 of the Palo Verde Nuclear Generating Station Updated Final Safety Analysis Report. The revisions to the FWLB/LOP/SF analysis reduced (1) The time assumed for the commencement of operator action from 30 minutes to 20 minutes, and (2) the rate of reactor coolant pump bleed-off to the reactor drain tank from 3 gallons per minute to zero.

Date of issuance: August 31, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 1–187; Unit 2–187; Unit 3–187.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses.

Date of initial notice in ***Federal Register:*** October 19, 2010 (75 FR 64361), and June 28, 2011 (76 FR 37853). The supplemental letters dated February 11 and May 25, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 2011.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: September 23, 2010.

Brief description of amendments: The license amendments revised Brunswick Steam and Electric Plant (BSEP), Units 1 and 2 Technical Specification (TS) 5.3.1, ''Facility Staff Qualifications.'' The amendments added an exception to ANSI N18.1, ''Selection and Training of Nuclear Power Plant Personnel,'' for the operations manager (OM) qualification. The amendments changed the TS requirement specific to the OM holding a senior reactor operator (SRO) license. The revised BSEP, Units 1 and 2 TS 5.3.1 refer to TS 5.2.2.f, that states ''The operations manager or assistant operations manager shall hold an SRO license.'' All other requirements for the OM, specified in ANSI N18.1–1971, such as a minimum of 8 years of responsible power plant experience, would be retained.

Date of issuance: August 25, 2011.

Effective date: Date of issuance, shall be implemented within 60 days of the effective date.

Amendment Nos.: Unit 1–259 and Unit 2–287.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the technical specifications.

Date of initial notice in ***Federal Register:*** February 8, 2011 (76 FR 6833).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated August 25, 2011.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: April 8, 2011.

Brief description of amendment: The amendment revises Fermi 2 Technical Specification (TS) to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. The request is submitted consistent with the guidance contained in NRC-approved Technical Specifications Task Force traveler 514 (TSTF–514). This technical specification improvement was made available by the NRC on December 17, 2010 (75 FR 79048), as part of the consolidated line item improvement process.

Date of issuance: August 26, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 186.

Facility Operating License No. NPF–43: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** May 31, 2011 (76 FR 31372).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 2011.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2 (Catawba 1 and 2), York County, South Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2 (McGuire 1 and 2), Mecklenburg County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3 (Oconee 1, 2, and 3), Oconee County, South Carolina

Date of application for amendments: August 16, 2010, as supplemented by letters dated September 27, 2010, March 7, 2011, April 15, 2011, and August 9, 2011.

Brief description of amendments: The amendments approved the Cyber Security Plan (CSP) and associated implementation schedule, and revised the licenses of Renewed Facility Operating License Nos. NPF–35 and NPF–52 for Catawba 1 and 2, Renewed Facility Operating License Nos. NPF–9 and NPF–17 for McGuire 1 and 2, and Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, for Oconee 1, 2, and 3, respectively, to provide a license condition to require the licensee to fully implement and maintain in effect all provisions of the NRC-approved CSP. The proposed change is consistent with Nuclear Energy Institute (NEI) 08–09, Revision 6, ''Cyber Security Plan for Nuclear Power Reactors.''

Date of issuance: August 31, 2011.

Effective date: The license amendments are effective as of the date of their issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on August 16, 2010, as supplemented by letters dated September 27, 2010, March 7, 2011, April 15, 2011, and August 9, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: 266/262 (Catawba); 264/244 (McGuire); 378/380/379 (Oconee).

Renewed Facility Operating License Nos. NPF–35, NPF–52, NPF–9, NPF–17, DPR–38, DPR–47, and DPR–55: Amendments revised the licenses.

Date of initial notice in ***Federal Register:*** July 7, 2011 (76 FR 39913). The supplements dated September 27, 2010, March 7, 2011, April 15, 2011, and August 9, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 2011.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 8, 2010.

Description of amendment request: The amendment would revise Technical Specifications (TS) to eliminate provisions allowing the high-pressure coolant injection (HPCI) system and the reactor core isolation cooling (RCIC) system to be aligned to the suppression pool when required instrument channels are inoperable. In this configuration, the HPCI and RCIC systems would not be capable of mitigating some plant events. Also, an administrative change to the TS Table of Contents is proposed.

Date of Issuance: August 25, 2011.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 248.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 11, 2011 (76 FR 1647).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 25, 2011.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1 (PNPP), Lake County, Ohio

Date of amendment request: July 16, 2010, as supplemented by letters dated September 20, 2010, November 29, 2010, February 15, 2011, and April 8, 2011.

Brief description of amendment request: This amendment was submitted in accordance with the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR), 50.4 and 50.90, and requested NRC approval of the PNPP CSP, the associated Implementation Schedule, and the addition of a sentence to the existing Physical Protection license condition in PNPP's Facility Operating License (FOL) to require FENOC to fully implement and maintain in effect all provisions of the NRC-approved CSP.

Date of issuance: August 29, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 8, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 158.

Facility Operating License No. NPF–58: The amendment revised PNPP's FOL.

Date of initial notice in ***Federal Register:*** November 9, 2010 (75 FR 68834). The supplemental letters dated September 29, 2010, November 29, 2010, February 15, 2011, and April 8, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's original proposed finding of no significant hazards consideration determination published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2011.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1 (DBNPS), Ottawa County, Ohio

Date of amendment request: July 16, 2010, as supplemented by letters dated September 28, 2010, November 23, 2010, February 1, 2011, and April 8, 2011.

Brief description of amendment request: This amendment was submitted in accordance with the provisions of 10 CFR 50.4 and 10 CFR 50.90 and requests NRC approval of the DBNPS CSP, the associated Implementation Schedule, and the addition of a sentence to the existing Physical Protection license condition in DBNP's Facility Operating License (FOL) to require FENOC to fully implement and maintain in effect all provisions of the NRC-approved DBNPS CSP.

Date of issuance: August 31, 2011.

Effective date: This license amendment is effective as of the date of its issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 8, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 283.

Facility Operating License No. NPF–3: The amendment revised DBNPS's FOL.

Date of initial notice in ***Federal Register:*** February 1, 2011 (76 FR 5621) The supplemental letters dated September 28, 2010, November 23, 2010, February 1, 2011, and April 8, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed finding of no significant hazards consideration determination published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 2011.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit 1 and 2, St. Lucie County, Florida

Date of application for amendments: August 2, 2010, as supplemented by letters dated September 27 and November 17, 2010, and April 8 and June 22, 2011.

Brief description of amendments: Amendments modify paragraph 3.F, ''Physical Protection,'' of the licenses of both units. The changes incorporate a requirement to fully implement and maintain in effect all provisions of the Commission-approved CSP.

Date of Issuance: August 31, 2011.

Effective Date: These license amendments are effective as of the date of their issuance. The implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on April 8, 2011, and approved by the NRC staff with these license amendments. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment Nos.: Unit 1–211 and Unit 2–160.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the license.

Date of initial notice in ***Federal Register:*** October 12, 2010 (75 FR 62600). The supplements dated September 27 and November 17, 2010, and April 8 and June 22, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 2011.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: December 16, 2010.

Brief description of amendment: The amendment revised Technical Specification (TS) 4.2.1, adding Optimized ZIRLO™ fuel rods to the fuel matrix in addition to Zircaloy or ZIRLO™ fuel rods that are currently in use. The amendment also add a Westinghouse topical report regarding Optimized ZIRLO™ as Reference 8 in TS 5.6.5.b, which lists the analytical methods used to determine the core operating limits.

Date of issuance: August 25, 2011.

Effective date: As of the date of issuance and shall be implemented

within 60 days from the date of issuance.

Amendment No.: 316.

Facility Operating License No. DPR–58: Amendment revised the Renewed Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 22, 2011 (76 FR 9826).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 2011.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1, Washington County, Nebraska

Date of amendment request: July 13, 2010, as supplemented by letters dated February 4 and August 19, 2011.

Brief description of amendment: The amendment revised language in Technical Specification (TS) 2.10.2, ''Reactivity Control Systems and Core Physics Parameters Limits,'' and revised table items related to TS 2.15, ''Instrumentation and Control Systems,'' which pertain to operability of the primary and secondary control element assembly (CEA) position indication system (CEAPIS) channels. A new surveillance requirement was added to TS 3.1, ''Instrumentation and Control,'' to verify the position of the CEAs each shift. The surveillance requirement for TS 3.1, Table 3–3, Item 1.a was modified to specify performance of a CHANNEL CHECK of the primary CEAPIS. By letter dated August 19, 2011, the licensee withdrew its proposed changes to Item 2.a of TS 3.1, Table 3–3 regarding the secondary CEAPIS.

Date of issuance: August 31, 2011.

Effective date: This license amendment is effective as of the date of its issuance and shall be implemented within 180 days from the date of issuance.

Amendment No.: 267.

Renewed Facility Operating License No. DPR–40: The amendment revised the operating license and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 25, 2011 (76 FR 4387). The supplemental letters dated February 4 and August 19, 2011 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated August 31, 2011.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit 1 and 2, Salem County, New Jersey

Date of application for amendments: October 4, 2010, as supplemented by letters dated April 7, 2011, and May 23, 2011.

Brief description of amendments: The amendments modify the Technical Specification (TS) requirements for snubbers due to revisions to the inservice inspection program.

Date of issuance: August 25, 2011.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 301 and 284.

Facility Operating License Nos.DPR–70 and DPR–75: The amendments revised the TSs and the Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** December 28, 2010 (75 FR 81672). The letters dated April 7, 2011, and May 23, 2011, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 2011.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of application for amendment: November 23, 2009, as supplemented December 18, 2009, July 23, 2010, October 1, 2010, April 7, 2011, June 10, 2011, and July 15, 2011.

Brief description of amendment: The amendment revised the Facility Operating License condition 2.E to add the CSP.

Date of issuance: August 30, 2011.

Effective date: As of the date of issuance, the implementation of the CSP, including the key intermediate milestone dates and the full implementation date, shall be in accordance with the implementation schedule submitted by the licensee on November 23, 2009, as supplemented by letters dated December 18, 2009, July 23, 2010, October 1, 2010, April 7, 2011, June 10, 2011, and July 15, 2011, and approved by the NRC staff with this license amendment. All subsequent changes to the NRC-approved CSP implementation schedule will require prior NRC approval pursuant to 10 CFR 50.90.

Amendment No.: 87.

Facility Operating License No. NPF–90: Amendment revised the License.

Date of initial notice in ***Federal Register****:* August 20, 2010 (75 FR 51495). TVA's supplements dated October 1, 2010, April 7, 2011, June 10, 2011, and July 15, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed proposed and did not change the staff's original proposed no significant hazards determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 2011.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of application for amendment: October 30, 2009, as supplemented May 24, 2011.

Brief description of amendment: The amendment revised License Condition 2.F regarding fire protection of the Operating License NPF–90.

Date of issuance: September 1, 2011.

Effective date: As of the date of issuance and shall be implemented no later than 30 days from date of issuance.

Amendment No.: 88.

Facility Operating License No. NPF–90: Amendment revised the License.

Date of initial notice in ***Federal Register:*** December 15, 2009 (74 FR 66385). TVA's supplement dated May 24, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 8th day of September 2011.

For the Nuclear Regulatory Commission .

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–23790 Filed 9–19–11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2011–0191]

Draft License Renewal Interim Staff Guidance LR–ISG–2011–05; Ongoing Review of Operating Experience

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; extension of comment period and public meeting.

SUMMARY: On August 24, 2011, in the **Federal Register** (76 FR 52995), the U.S. Nuclear Regulatory Commission (NRC) requested public comments on Draft License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2011–05, ''Ongoing Review of Operating Experience.'' This LR–ISG provides guidance and clarification concerning ongoing review of plant-specific and industry-wide operating experience as an attribute of aging management programs used at nuclear power plants. In response to a request from the Nuclear Energy Institute (NEI), the NRC is extending the public comment period until October 23, 2011, and holding a public meeting on October 12, 2011, to discuss the draft LR–ISG.

DATES: The comment period has been extended and expires on October 23, 2011. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0191 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0191. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Homiack, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1683; or e-mail: *Matthew.Homiack@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room:* The public may examine and have copied, for a fee, publicly available documents at the NRC's Public Document Room, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* Draft LR–ISG–2011–05 is available electronically under ADAMS Accession No. ML11203A411. A notice of the October 12, 2011, public meeting is available under ADAMS Accession No. ML11251A134.
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0191.
- *NRC's Interim Staff Guidance Web site:* LR–ISG documents are available online under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*
- *NRC's Public Meeting Schedule Web site:* The NRC posts its upcoming public meetings at *http://www.nrc.gov/public-involve/public-meetings.*

Background

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents, such as NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report'' (ADAMS Accession No. ML103490041), and NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR) (ADAMS Accession No. ML103490036). In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document before it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISG in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC staff developed draft LR–ISG–2011–05 to clarify guidance on how the ongoing review of operating experience should be used to ensure the effectiveness of the license renewal aging management programs used at nuclear power plants to meet the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.'' The draft LR–ISG proposes to revise the NRC staff's recommended aging management programs in the GALL Report and the NRC staff's aging management review procedures and acceptance criteria in the SRP–LR.

On August 24, 2011, the NRC requested public comments on draft LR–ISG–2011–05. By letter dated August 29, 2011 (ADAMS Accession No. ML11242A114), the NEI requested a 30-day extension to the comment period and a public meeting to discuss draft comments and questions concerning

implementation of the LR–ISG. The NRC staff believes that discussions at a public meeting will help stakeholders better prepare their comments on the draft LR–ISG. As such, the NRC staff is granting NEI's request for a public meeting. The meeting will be held on October 12, 2011. The public is invited to participate in this meeting by providing comments and asking questions throughout the meeting. The NRC staff is also granting NEI's request for a 30-day extension of the comment period. The extended comment period ends on October 23, 2011. This extension will allow the NRC staff to hold the public meeting during the comment period. It will also give stakeholders the opportunity to inform their comments based on the meeting discussions before closing of the comment period. The NRC staff will make a final determination regarding issuance of the LR–ISG after it considers any public comments received in response to this request.

Public Meeting

The NRC is holding a public meeting on October 12, 2011. This meeting will be held at NRC Headquarters, 11545 Rockville Pike, Rockville, MD 20852, from 1 p.m. to 3 p.m. Eastern Daylight Time. A teleconference will be available for those individuals who wish to participate but cannot attend in person. Additional details on this meeting, including room location and teleconference information, will be available in ADAMS under Accession No. ML11251A134 and will be on the NRC's Public Meeting Schedule Web site at least ten days prior to the meeting.

For the Nuclear Regulatory Commission.

Dated: September 14, 2011.

Melanie A. Galloway,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–24061 Filed 9–19–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of September 19, 26, and October 3, 10, 17, 24, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 19, 2011

There are no meetings scheduled for the week of September 19, 2011.

Week of September 26, 2011—Tentative

Tuesday, September 27, 2011

9 a.m. Mandatory Hearing—Southern Nuclear Operating Co., et al.; Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4, and Limited Work Authorizations (Public Meeting); (Contact: Rochelle Bavol, 301–415–1651).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 3, 2011—Tentative

Thursday, October 6, 2011

9 a.m. Briefing on NRC International Activities (Public Meeting); (Contact: Karen Henderson, 301–415–0202).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 10, 2011—Tentative

Tuesday, October 11, 2011

9 a.m. Briefing on the Japan Near Term Task Force Report—Prioritization of Recommendations (Public Meeting); (Contact: Rob Taylor, 301–415–3172).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, October 12, 2011

9 a.m. Mandatory Hearing—South Carolina Electric & Gas Company and South Carolina Public Service Authority (Also Referred to As Santee Cooper); Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3 (Public Meeting); (Contact: Rochelle Bavol, 301–415–1651).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 17, 2011—Tentative

Tuesday, October 18, 2011

9 a.m. Briefing on Browns Ferry Unit 1 (Public Meeting); (Contact: Eugene Guthrie, 404–997–4662).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Thursday, October 20, 2011

1:30 p.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Week of October 24, 2011—Tentative

There are no meetings scheduled for the week of October 24, 2011.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 15, 2011.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–24228 Filed 9–16–11; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–69; Order No. 853]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Old Chatham, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): September 23, 2011.

Deadline for notices to intervene: October 11, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 8, 2011, the Commission received a petition for review of the Postal Service's determination to close the Old Chatham post office in Old Chatham, New York. The petition was filed by Karen A. Murphy and Richard A. Dorsey (Petitioners) and is postmarked September 6, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–69 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 13, 2011.

Categories of Issues Apparently Raised

Petitioners contend that: (1) The Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i); and (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the ones set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 23, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 23, 2011.

Availability; Web Site Posting

The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic-mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of Documents

All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention

Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 11, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further Procedures

By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 23, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 23, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James Waclawski is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 8, 2011	Filing of Appeal.
September 23, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 23, 2011	Deadline for the Postal Service to file any responsive pleading.
October 11, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 13, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 2, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 17, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).

PROCEDURAL SCHEDULE—Continued

November 25, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 4, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–24017 Filed 9–19–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–68; Order No. 852]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Board Camp, Arkansas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): September 23, 2011; *deadline for notices to intervene:* October 11, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 8, 2011, the Commission received a petition for review of the Postal Service's determination to close the Board Camp post office in Board Camp, Arkansas. The petition was filed by the Residents and Customers of Board Camp, Arkansas Post Office (Petitioners) and is postmarked August 29, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–68 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 13, 2011.

Categories of issues apparently raised. Petitioners contend that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i); and (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the ones set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 23, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 23, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic-mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic-mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 11, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 23, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 23, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Malin Moench is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 8, 2011	Filing of Appeal.
September 23, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 23, 2011	Deadline for the Postal Service to file any responsive pleading.
October 11, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 13, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 2, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 17, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 25, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 27, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–24029 Filed 9–19–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, September 21, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, September 21, 2011 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: September 16, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24212 Filed 9–16–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65328; File No. SR–EDGA–2011–30]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA By-Laws

September 13, 2011.

Pursuant to Section 19(b)(1) of the *Securities Exchange Act of 1934* (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 2, 2011, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 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 the EDGA By-Laws to: (i) Incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with the Exchange's ability to retain a third party to perform all or a portion of its audit function. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to make improvements to the Exchange's governance, and make certain clarifying amendments to its By-Laws. Specifically, the Exchange proposes to: (i) Incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

the Exchange's ability to retain a third party to perform all or a portion of its audit function.

First, EDGA proposes certain amendments to its By-Laws to improve its governance. Article VI, Section 2 of the By-Laws currently provides, in pertinent part, that the Nominating Committee shall nominate candidates for election to the Board and all other vacant or new Director positions on the Board. The Board met and approved the assignment of additional responsibilities for the Nominating Committee. Specifically, the Committee shall nominate chairpersons to serve on committees of the Board; oversee the implementation and effectiveness of the By-Laws, committee charters and other governance documents as needed; review and make recommendations regarding best practices in corporate governance; and oversee an annual self-evaluation of the independent Directors and each Board committee.

The Exchange believes that combining nominating and governance functions in a single committee will help ensure a careful consideration of nominees through a structured process. Although distinct, nominating and governance are related functions. The combined functions will allow the Nominating and Governance Committee to play a critical role in overseeing matters of corporate governance for the Board, including formulating and recommending governance principles. The Exchange believes that consolidating these functions in a single committee will improve the input of the committee in the overall committee process by taking advantage of overlaps in issues emanating from each function.

Combining governance responsibilities will not impair the committee's functioning. The overlap in responsibilities should improve efficiency as well as coordination within the Exchange, as the same group of committee members will oversee the entire nominating and governance function. Through these new functions, the Nominating and Governance Committee will have a greater role in overseeing Exchange governance. As a result, the Committee will be better positioned to provide future governance advice, while gaining a better understanding of the skills and attributes necessary for a candidate for Board membership or committee chairpersonship. By enhancing the quality of nominees to the Board, and ensuring the integrity of the nomination process, the Exchange believes that these additional functions will considerably improve its governance to the benefit of the Exchange and its stockholders.

The Exchange believes that combining nominating and governance functions within one committee is consistent with prior precedent, in that the Chicago Board Options Exchange, C2 Options Exchange, Inc., NYSE Euronext, and the NASDAQ OMX Group, Inc. currently have a Nominating and Governance Committee [3] performing functions similar to those proposed in this filing.[4]

Second, EDGA By-Laws currently provide for a Nominating Committee which Committee is appointed pursuant to the By-Laws. The Exchange is proposing to name this Committee the ''Nominating and Governance Committee.'' The Exchange proposes to amend the By-Laws to change all references to the ''Nominating Committee'' to state ''Nominating and Governance Committee.''

Third, the Exchange added the phrase ''Nothing herein shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function'' to Article V, Section 5(b) of its By-Laws. Under the current powers and responsibilities listed in that section of the By-Laws, the Audit Committee shall direct and oversee all the activities of the Company's internal audit function, including management's responsiveness to internal audit recommendations. Specifically, the Board seeks to clarify that references to the internal audit function relate to internal controls, and do not necessarily require internal auditors to perform the internal audit function. Accordingly, this amendment does not change the Audit Committee's current responsibilities, but is intended to clarify the Exchange's current ability to retain a third party auditor through codification in the By-Laws. The Exchange notes that it shall supervise and retain primary responsibility for any action undertaken by a third-party auditor retained to perform all or a portion of the Exchange's audit function.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[5] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposed additions will improve EDGA's governance structure by taking advantage of overlaps in nominating and governance functions. The additions promote consistency and efficiency in governance by consolidating these functions in one committee. Through the implementation of sound governance policies and practices, the Nominating Committee can better enhance the quality of Board nominees and ensure the integrity of the nomination process. This furthers EDGA's ability to be organized in a manner to have the capacity to carry out the purposes of the Act consistent with Section 6(b)(1) of the Act [6] and to carry out the purposes of Section 6(b)(5) of the Act.[7]

The changes will ensure that the committee's title accurately reflects the Nominating Committee's new governance functions as adopted by the Board. Codifying the Audit Committee's ability to retain third party auditors reflects the Board's determination that outsourcing the internal audit function to a third-party auditor can benefit the Exchange by providing another mechanism to detect and prevent fraudulent and manipulative acts and practices. Accordingly, the Exchange believes that the amendments are consistent with investor protection and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The

[3] *See* Article IV, Section 4.4 of the By-Laws of the Chicago Board Options Exchange; Article IV, Section 4.4 of the By-Laws of the C2 Options Exchange, Inc.; Article IV, Section 4.4 of the By-Laws of NYSE Euronext; Article IV, Section 4.13(h) of the By-Laws of the NASDAQ OMX Group, Inc.

[4] *See* Nominating and Governance Committee Charter, Chicago Board of Options Exchange (adopted May 17, 2011); Nominating & Corporate Governance Committee Charter, NASDAQ OMX Group, Inc. (approved July 26, 2010); Nominating and Governance Committee Charter, NYSE Euronext (adopted Dec. 12, 2007). Although not named the Nominating and Governance Committee, the International Securities Exchange's Corporate Governance Committee also performs nominating and governance functions similar to those proposed by EDGA. *See* Charter of the Corporate Governance Committee of International Securities Exchange, LLC.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(5).

Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (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 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6)[9] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[11] 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. Because the proposed rule change is designed to codify and/or enhance certain of the Exchange's governance provisions, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[12]

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2011–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–30 and should be submitted on or before October 11, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24067 Filed 9–19–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. EDGA has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65329; File No. SR–EDGX–2011–29]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX By-Laws

September 13, 2011.

Pursuant to Section 19(b)(1) of the *Securities Exchange Act of 1934* (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 2, 2011, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 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 the EDGX By-Laws to: (i) Incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with the Exchange's ability to retain a third party to perform all or a portion of its audit function. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to make improvements to the Exchange's governance, and make certain clarifying amendments to its By-Laws. Specifically, the Exchange proposes to: (i) Incorporate enhanced Nominating Committee responsibilities; (ii) amend the name of the Nominating Committee to the Nominating and Governance Committee; and (iii) revise By-Law Article V, Section 5(b) to state that nothing in the Audit Committee description prohibits or conflicts with the Exchange's ability to retain a third party to perform all or a portion of its audit function.

First, EDGX proposes certain amendments to its By-Laws to improve its governance. Article VI, Section 2 of the By-Laws currently provides, in pertinent part, that the Nominating Committee shall nominate candidates for election to the Board and all other vacant or new Director positions on the Board. The Board met and approved the assignment of additional responsibilities for the Nominating Committee. Specifically, the Committee shall nominate chairpersons to serve on committees of the Board; oversee the implementation and effectiveness of the By-Laws, committee charters and other governance documents as needed; review and make recommendations regarding best practices in corporate governance; and oversee an annual self-evaluation of the independent Directors and each Board committee.

The Exchange believes that combining nominating and governance functions in a single committee will help ensure a careful consideration of nominees through a structured process. Although distinct, nominating and governance are related functions. The combined functions will allow the Nominating and Governance Committee to play a critical role in overseeing matters of corporate governance for the Board, including formulating and recommending governance principles. The Exchange believes that consolidating these functions in a single committee will improve the input of the committee in the overall committee process by taking advantage of overlaps in issues emanating from each function.

Combining governance responsibilities will not impair the committee's functioning. The overlap in responsibilities should improve efficiency as well as coordination within the Exchange, as the same group of committee members will oversee the entire nominating and governance function. Through these new functions, the Nominating and Governance Committee will have a greater role in overseeing Exchange governance. As a result, the Committee will be better positioned to provide future governance advice, while gaining a better understanding of the skills and attributes necessary for a candidate for Board membership or committee chairpersonship. By enhancing the quality of nominees to the Board, and ensuring the integrity of the nomination process, the Exchange believes that these additional functions will considerably improve its governance to the benefit of the Exchange and its stockholders.

The Exchange believes that combining nominating and governance functions within one committee is consistent with prior precedent, in that the Chicago Board Options Exchange, C2 Options Exchange, Inc., NYSE Euronext, and the NASDAQ OMX Group, Inc. currently have a Nominating and Governance Committee [3] performing functions similar to those proposed in this filing.[4]

Second, EDGX By-Laws currently provide for a Nominating Committee which Committee is appointed pursuant to the By-Laws. The Exchange is proposing to name this Committee the ''Nominating and Governance Committee.'' The Exchange proposes to amend the By-Laws to change all references to the ''Nominating Committee'' to state ''Nominating and Governance Committee.''

Third, the Exchange added the phrase ''Nothing herein shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function'' to Article V, Section 5(b) of its By-Laws. Under the current powers and responsibilities listed in that section of the By-Laws, the Audit Committee shall direct and oversee all the activities of the Company's internal audit function, including management's responsiveness to internal audit recommendations. Specifically, the Board seeks to clarify that references to the internal audit function relate to internal controls, and do not necessarily require internal auditors to perform the internal audit function. Accordingly, this amendment does not change the Audit Committee's current responsibilities, but is intended to clarify the Exchange's current ability to retain a third party auditor through codification in the By-Laws. The Exchange notes that it shall supervise and retain primary responsibility for any action undertaken by a third-party auditor retained to perform all or a portion of the Exchange's audit function.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[5] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposed additions will improve EDGX's governance structure by taking advantage of overlaps in nominating and governance functions. The additions promote consistency and efficiency in governance by consolidating these functions in one committee. Through the implementation of sound governance policies and practices, the Nominating Committee can better enhance the quality of Board nominees and ensure the integrity of the nomination process. This furthers EDGX's ability to be organized in a manner to have the capacity to carry out the purposes of the Act consistent with Section 6(b)(1) of the Act [6] and to carry out the purposes of Section 6(b)(5) of the Act.[7]

The changes will ensure that the committee's title accurately reflects the Nominating Committee's new governance functions as adopted by the Board. Codifying the Audit Committee's ability to retain third party auditors reflects the Board's determination that outsourcing the internal audit function to a third-party auditor can benefit the Exchange by providing another

[3] *See* Article IV, Section 4.4 of the By-Laws of the Chicago Board Options Exchange; Article IV, Section 4.4 of the By-Laws of the C2 Options Exchange, Inc.; Article IV, Section 4.4 of the By-Laws of NYSE Euronext; Article IV, Section 4.13(h) of the By-Laws of the NASDAQ OMX Group, Inc.

[4] *See* Nominating and Governance Committee Charter, Chicago Board of Options Exchange (adopted May 17, 2011); Nominating & Corporate Governance Committee Charter, NASDAQ OMX Group, Inc. (approved July 26, 2010); Nominating and Governance Committee Charter, NYSE Euronext (adopted Dec. 12, 2007). Although not named the Nominating and Governance Committee, the International Securities Exchange's Corporate Governance Committee also performs nominating and governance functions similar to those proposed by EDGX. *See* Charter of the Corporate Governance Committee of International Securities Exchange, LLC.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(5).

mechanism to detect and prevent fraudulent and manipulative acts and practices. Accordingly, the Exchange believes that the amendments are consistent with investor protection and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (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 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] 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. Because the proposed rule change is designed to codify and/or enhance certain of the Exchange's governance provisions, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[12]

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2011–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–29 and should be submitted on or before October 11, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24068 Filed 9–19–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. EDGX has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65339]

Order Granting Temporary Exemption of Kroll Bond Rating Agency, Inc. From the Conflict of Interest Prohibition in Rule 17g–5(c)(1) of the Securities Exchange Act of 1934

September 14, 2011.

I. Introduction

Rule 17g–5(c)(1) of the *Securities Exchange Act of 1934* (''Exchange Act'') prohibits a nationally recognized statistical rating organization (''NRSRO'') from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equaling or exceeding 10% of the total net revenue of the NRSRO for the fiscal year. In adopting this rule, the Commission stated that such a person would be in a position to exercise substantial influence on the NRSRO, which in turn would make it difficult for the NRSRO to remain impartial.[1]

II. Application and Exemption Request of Kroll Bond Rating Agency, Inc.

Kroll Bond Rating Agency, Inc. (''Kroll''), f/k/a LACE Financial Corp. (''LACE''), is a credit rating agency registered with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. Kroll traditionally has operated mainly under the ''subscriber-paid'' business model, in which the NRSRO derives its revenue from restricting access to its ratings to paid

[1] Release No. 34–55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

subscribers. Kroll has informed the Commission that it intends to expand its existing NRSRO business by establishing a new ''issuer-paid'' rating service under which it will issue ratings paid for by the issuer, underwriter, or sponsor of the security being rated. In connection with this planned expansion, Kroll has requested a temporary and limited exemption from Rule 17g–5(c)(1) on the grounds that the restrictions imposed by Rule 17g–5(c)(1) would pose a substantial constraint on the firm's ability to compete effectively with large rating agencies offering comparable ratings services. Specifically, Kroll argues that given that the fees typically associated with issuer-paid engagements tend to be relatively high when compared to the fees associated with its existing subscriber-based business, it is possible that in the early stages of its expansion the fees associated with a single issuer-paid engagement could exceed ten percent of its total net revenue for the fiscal year. Accordingly, Kroll has requested that the Commission grant it an exemption from Rule 17g–5(c)(1) for any revenues derived from non-subscription based business during the remainder of calendar years 2011 and 2012, which are also the end of Kroll's 2011 and 2012 fiscal years, respectively.

III. Discussion

The Commission, when adopting Rule 17g–5(c)(1), noted that it intended to monitor how the prohibition operates in practice, particularly with respect to asset-backed securities, and whether exemptions may be appropriate.[2] The Commission has previously granted two temporary exemptions from Rule 17g–5(c)(1), including one on February 11, 2008 to LACE, as Kroll was formerly known, in connection with its initial registration as an NRSRO (''LACE Exemptive Order'').[3] The Commission noted several factors in granting that exemption, including the fact that the revenue in question was earned prior to the adoption of the rule, the likelihood of smaller firms such as LACE being more likely to be affected by the rule, LACE's expectation that the percentage of total revenue provided by the relevant client would decrease, and the increased competition in the asset-backed securities class that could result from LACE's registration. In granting the LACE Exemptive Order, the Commission also noted that an exemption would further the primary purpose of the *Credit Rating Agency Reform Act of 2006* (''Rating Agency Act'') as set forth in the Report of the Senate Committee on Banking, Housing, and Urban Affairs accompanying the Rating Agency Act: To ''improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.''[4] On June 23, 2008, the Commission, citing the same factors set forth in the LACE Exemptive Order, issued a similar order granting Realpoint LLC a temporary exemption from the requirements of Rule 17g–5(c)(1) in connection with Realpoint LLC's registration as an NRSRO.[5]

On September 2, 2010, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings (''LACE/Putnam Order'') against LACE and Barron Putnam, LACE's founder as well as its majority owner during the relevant time period. The LACE/Putnam Order found, among other things, that the firm made misrepresentations in its application to become registered as an NRSRO and its accompanying request for an exemption from Rule 17g–5(c)(1). Specifically, the Commission found that the firm materially misstated the amount of revenue it received from its largest customer during 2007.[6] On November 9, 2010, the Commission issued an Order Making Findings and Imposing A Cease-and-Desist Order (the ''Mouzon Order'') against LACE's former president, Damyon Mouzon. The Mouzon Order found, among other things, that as LACE's president, Mouzon was responsible for ensuring the accuracy of the information provided to the Commission in connection with the firm's NRSRO application and its request for an exemption, and that he knew or should have known that the financial information that LACE provided to the Commission in connection with its NRSRO application and its request for an exemption from Rule 17g–5(c)(1) was inaccurate.[7] LACE, Putnam and Mouzon each consented to the entry of those orders on a neither admit nor deny basis.

In the request that is subject to this Order, Kroll acknowledged the recent orders against LACE and its former owner and president and stated that it has taken significant steps to enhance the compliance and other functions associated with the traditional subscriber-based business, including replacing senior management, retaining new compliance and financial personnel, and adding new independent directors comprising a majority of the board. Kroll has informed Commission staff that LACE's former ownership and management personnel no longer have any ownership or other relationship, financial or otherwise, with Kroll. Kroll has further informed Commission staff that LACE ceased performing any work or analysis in connection with the issuer-paid ratings that were the subject of the LACE Exemptive Order in December 2008.

The Commission believes that a temporary, limited and conditional exemption allowing Kroll to enter the market for rating structured finance products is consistent with the Commission's goal of improving ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry. In order to maintain this exemption, Kroll will be required to publicly disclose in Exhibit 6 to Form NRSRO, as applicable, that the firm received more than 10% of its net revenue in fiscal years 2011 and 2012 from a client or clients that paid it to rate asset-backed securities. This disclosure is designed to alert users of credit ratings to the existence of this specific conflict and is consistent with exemptive relief the Commission has previously granted to LACE and Realpoint LLC. Furthermore, in addition to Kroll's existing obligations as an NRSRO to maintain policies, procedures, and internal controls, by the terms of this order, Kroll will also be required to maintain policies, procedures, and internal controls specifically designed to address the conflict created by exceeding the 10% threshold. Finally, the Commission notes that Kroll is subject to the September 2, 2010 Order Instituting Administrative and Cease-and-Desist Proceedings against LACE Financial Corp.

Section 15E(p) of the Exchange Act, as added by Section 932(a)(8) of the *Dodd-*

[2] Release No. 34–55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

[3] Release No. 34–57301 (February 11, 2008), 73 FR 8720 (February 14, 2008).

[4] *See* Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850, *Credit Rating Agency Reform Act of 2006,* S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006).

[5] Release No. 34–58001 (June 23, 2008), 73 FR 36362 (June 26, 2008).

[6] In the Matter of LACE Financial Corp. and Barron Putnam, Respondents: Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15E(d) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders, Release No. 62834 (September 2, 2010).

[7] In the Matter of Damyon Mouzon, Respondent: Order Making Findings and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934, Release No. 63280 (November 9, 2010).

Frank Wall Street Reform and Consumer Protection Act, requires Commission staff to conduct an examination of each NRSRO at least annually. As part of this annual examination regimen for NRSROs, Commission staff will closely review Kroll's activities with respect to managing this conflict and meeting the conditions set forth below and will consider whether to recommend that the Commission take additional action, including administrative or other action.

The Commission therefore finds that a temporary, limited and conditional exemption allowing Kroll to enter the market for rating structured finance products is consistent with the Commission's goal, as established by the *Rating Agency Act,* of improving ratings quality by fostering accountability, transparency, and competition in the credit rating industry, subject to Kroll's making public disclosure of the conflict created by exceeding the 10% threshold and maintaining policies, procedures and internal controls to address that conflict, is necessary and appropriate in the public interest and is consistent with the protection of investors.

IV. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,

It is hereby ordered that Kroll Bond Rating Agency, Inc., formerly known as LACE Financial Corp., is exempt from the conflict of interest prohibition in Exchange Act Rule 17g–5(c)(1) until January 1, 2013, with respect to any revenue derived from issuer-paid ratings, provided that: (1) Kroll Bond Rating Agency, Inc. publicly discloses in Exhibit 6 to Form NRSRO, as applicable, that the firm received more than 10% of its total net revenue in fiscal year 2011 or 2012 from a client or clients; and (2) in addition to fulfilling its existing obligations as an NRSRO to maintain policies, procedures, and internal controls, Kroll Bond Rating Agency, Inc. also maintains policies, procedures, and internal controls specifically designed to address the conflict created by exceeding the 10% threshold.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24028 Filed 9–19–11; 8:45 am]

BILLING CODE 8011–01–P

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Publication of Notice of Systems of Records

AGENCY: Selective Service System.

ACTION: Notice: publication of systems of records.

SUMMARY: The purpose of this notice is to meet the requirement of the *Privacy Act of 1974* regarding the publication of the agency's notice of systems of records. The complete text of all Selective Service System notices appears below.

Authority: 5 U.S.C. 552a

Systems of Records

SSS–2 General Files (Registrant Processing).
SSS–3 Reconciliation Service Records.
SSS–4 Registrant Information Bank (RIB) Records.
SSS–5 Reserve and National Guard Personnel Records.
SSS–6 Uncompensated Personnel Records.
SSS–7 Suspected Violator Inventory System.
SSS–8 Pay Record.
SSS–9 Registrant Registration Records.

SSS–2

SYSTEM NAME:

General Files B (Registrant Processing) SSS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants of the Selective Service System and other individuals and organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains current and previous correspondence with individual registrants, private individuals and Government agencies, requesting information or resolution of specific problems related to registrant processing or agency operations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3), *Military Selective Service Act* (50 U.S.C. App. 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED ON THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Justice—To refer reports received as to possible violations of the *Military Selective Service Act.*

Federal Bureau of Investigation—To refer reports received as to possible violations of the *Military Selective Service Act.*

Department of Defense—To exchange information respecting status of individuals subject to the provisions of the *Military Selective Service Act.*

U.S. Citizenship and Immigration Services—For responding to inquiries concerning aliens.

Department of Health and Human Services—For locations of parents pursuant to the *Child Support Enforcement Act* (42 U.S.C. 651 *et seq.*)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

Paper copies maintained in routine filing equipment.

RETRIEVABILITY:

Records are indexed alphabetically by last name.

SAFEGUARDS:

Measures that have been taken to prevent unauthorized disclosures of records are:

a. Records maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosures of information; offices are locked when authorized personnel are not on duty.

b. Periodic security checks and other emergency planning.

c. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed. Records eligible for destruction are destroyed by maceration, shredding or burning.

RETENTION AND DISPOSAL:

Hold file intact for five years from date of latest correspondence.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

RECORD ACCESS PROCEDURES:

An individual desiring to obtain information on the procedures for gaining access to and contesting records may write to: Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

It is necessary to furnish the following information in order to identify the individual whose records are requested:

a. Full name of the individual.

b. Date of birth.

c. Selective Service Number (if available).

d. Mailing address to which the reply should be mailed.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

Individual registrants, private individuals and organizations, and

members of Congress acting on behalf of constituents.

SYSTEMS EXEMPTED FOR CERTAIN PROVISIONS OF THE ACT:

None.

SSS–3

SYSTEM NAME:

Reconciliation Service Records—SSS

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vietnam era draft evaders and military deserters (whose surnames begin with A through R) who have qualified for a period of alternate service as a condition for reconciliation under Presidential Proclamation 4313, signed September 16, 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Registration Card: Individual's name, address, telephone number, personal description, date of birth, Social Security Account Number, former military service, date of registration, reconciliation service required, date of reconciliation service started and terminated, total reconciliation service, individual's signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Proc. 4313; E.O. 11804; 5 U.S.C. 553; 50 U.S.C. App. 460(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For referral to the appropriate military authority, upon request, in cases involving the updating of military discharges.

To respond to inquiries from individuals concerning participation in the reconciliation program under Presidential Proclamation 4313.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All registration cards and microfiche of registration cards are stored in metal or wood filing cabinets.

RETRIEVABILITY:

The system is alphabetically indexed by last name.

SAFEGUARDS:

Measures that have been taken to prevent unauthorized disclosures of records are:

a. Records maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosures of information; offices are locked when authorized personnel are not on duty.

b. Periodic security checks and other emergency planning.

c. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed. Records eligible for destruction are destroyed by maceration, shredding or burning.

RETENTION AND DISPOSAL:

Registration Cards or microfilm thereof will be retained until the enrollee reaches 85 years of age.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Selective Service, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

RECORD ACCESS PROCEDURES:

An individual desiring to obtain information on the procedures for gaining access to and contesting records may write to: Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

Sources of records in the system are primarily established by the individual at the time and place of enrollment, based on oral and written information given by the enrollee. Other sources of information include the Report of Separation From Active Duty (DD Form 214), referral documents from the referring authority and information provided by an enrollee's employer.

SYSTEMS EXEMPTED FOR CERTAIN PROVISIONS OF THE ACT:

None.

SSS–4

SYSTEM NAME:

Registrant Information Bank (RIB) Records—SSS

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Data Management Center/ USMEPCOM Customer Support Division IT Directorate, Great Lakes, Illinois 60088.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants of the Selective Service System after 1979 (born after December 31, 1959).

CATEGORIES OF RECORDS IN THE SYSTEM:

The Registrant Information Bank (RIB) is an automated data processing system which stores information concerning registration, classification, examination, assignment and induction of Selective Service registrants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3) of the *Military Selective Service Act* (50 U.S.C. App. 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The *Military Selective Service Act,* Selective Service regulations, and the President's Proclamation on Registration requires those registering with Selective Service to provide their full name, date of birth, address, sex, Social Security Account Number, if they have one, and their signature. The principal purpose of the requested information is to establish or verify a person's registration with the Selective Service System. Registration information may be shared with the following government agencies for the purposes stated:

Department of Justice—For review and processing of suspected violations of the Military Selective Service Act (MSSA), for perjury, and for defense of a civil action arising from administrative processing under such Act.

Department of State and U.S. Citizenship and Immigration Services—For collection and evaluation of data to determine a person's eligibility for entry/reentry into the United States and for United States citizenship.

Department of Defense and U.S. Coast Guard—To exchange data concerning registration, classification, induction, and examination of registrants and for identification of prospects for recruiting.

Department of Labor—To assist veterans in need of data concerning reemployment rights, and for determination of eligibility for benefits under the Workforce Investment Act.

Department of Education—To determine eligibility for student financial assistance.

U.S. Census Bureau—For the purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13.

Office of Personnel Management and U.S. Postal Service—To determine eligibility for employment.

Department of Health and Human Services—To determine a person's proper Social Security Account Number and for locating parents pursuant to the Child Support Enforcement Act.

State and Local Governments—To provide data that may constitute evidence and facilitate the enforcement of state and local law.

Alternative Service Employers—During conscription, to exchange information with employers regarding a registrant who is a conscientious objector for the purpose of placement and supervision of performance of alternative service in lieu of induction into the military service.

General Public—Registrant's name, Selective Service Registration Number, Date of Birth and Classification, (Military Selective Service Act, Section 6, 50 U.S.C. App.456h).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on tape and disk.

RETRIEVABILITY:

The system is indexed primarily by Selective Service Number.

SAFEGUARDS:

a. On-line access to RIB from terminals is available to authorized personnel, and is controlled by User Identification and password. Batch access controlled via standard data processing software and hardware techniques.

b. Records are handled by authorized personnel only, who have been trained in the rules and regulations concerning disclosures of information; offices are locked when authorized personnel are not on duty and protected by an electronic security access system at all times.

c. Premises are locked and patrolled when authorized personnel are not on duty.

d. Periodic security checks and other emergency planning.

RETENTION AND DISPOSAL:

When eligible for disposal, the computer tapes are erased. The records stored in the Registrant Information Bank (RIB) are retained until the registrant reaches 85 years of age.

The computer printouts are distributed to National Headquarters and destroyed when they have served their purpose by maceration, shredding, or burning. Computer printouts used at the Data Management Center are destroyed by maceration after they have served their purpose or upon records appraisal action.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Selective Service, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

RECORD ACCESS PROCEDURES:

An individual desiring to obtain information on the procedures for gaining access to and contesting records may write to: Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

It is necessary to furnish the following information in order to identify the individual whose records are requested:

a. Full name of the individual.

b. Date of birth.

c. Selective Service Number (if known), Social Security Account Number.

d. Mailing address to which the reply should be mailed.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

Information submitted by the registrant, Federal and state agencies create the input information recorded in the SSS—Registrant Information Bank (RIB) Records.

SYSTEMS EXEMPTED FOR CERTAIN PROVISIONS OF THE ACT:

None.

SSS–5

SYSTEM NAME:

Reserve and National Guard Personnel Records—SSS

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and Warrant Officers of the Reserve and National Guard currently assigned to the Selective Service System, and Officers and Warrant Officers formerly so assigned.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain information relating to selection, placement and utilization of military personnel, such as name, rank, Social Security Account Number, date of birth, physical profile, residence and business, addresses, and telephone numbers. Information is also recorded on unit of assignment, occupational codes and data pertaining to training, cost factors, efficiency ratings and mobilization assignments and duties, and other information relating to the status of the member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(2) of the *Military Selective Service Act* (50 U.S.C. App. 460(b)(2)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to the individual member's branch of the Armed Forces as required in connection with their assignment to the Selective Service System.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on magnetic tape or disk.

RETRIEVABILITY:

Records are indexed by name and Service Number.

SAFEGUARDS:

Records are maintained in lockable file containers. Measures that have been taken to prevent unauthorized disclosures of records are:

a. Use of the records or any information contained therein is limited to Selective Service System employees or Reserve Forces Members whose official duties require access.

b. Records maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosures of information; offices are locked when authorized personnel are not on duty.

c. Periodic security checks and other emergency planning.

d. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed. Records eligible for destruction are destroyed by maceration, shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Selective Service, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

RETENTION AND DISPOSAL:

Personnel records for Selective Service Reserve Forces are retained for one (1) year after separation and then disposed of in accordance with procedures provided by each Branch of Service.

RECORD ACCESS PROCEDURES:

SSS Reserve Forces Members or former members who wish to gain access to their records should make their request in writing addressed to: Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Military Personnel.

It is necessary to include the Member's full name, rank, branch of service, address, and Social Security Account Number.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual to whom it applies or is derived from information supplied or is provided by the individual Branch of the Armed Forces.

SYSTEMS EXEMPTED FOR CERTAIN PROVISIONS OF THE ACT:

None.

SSS–6

SYSTEM NAME:

Uncompensated Personnel Records—SSS

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Currently appointed uncompensated local board and appeal board members, other persons appointed in advisory or administrative capacity, and former appointees in an uncompensated capacity.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain information relating to selection, appointment and separation of appointees, such as name, date of birth, mailing address, residence and organization location, position title, minority group code, sex, weight, etc. length of service and occupational title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3) of the *Military Selective Service Act* (50 U.S.C. App.460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Justice for exchange of information when required in connection with processing of alleged violations of the Military Selective Service Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on magnetic tape or disk.

RETRIEVABILITY:

Records are indexed by name of individual record identification number and location.

SAFEGUARDS:

Records are maintained in lockable file containers. Measures that have been taken to prevent unauthorized disclosures of records are:

a. Use of the records or any information contained therein is limited to Selective Service System employees whose official duties require such access.

b. Records maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosures of information; offices are locked when authorized personnel are not on duty.

c. Periodic security checks and other emergency planning.

d. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed. Records eligible for destruction are destroyed by maceration, shredding or burning.

RETENTION AND DISPOSAL:

Personnel records for uncompensated personnel are maintained for one (1) year after separation at the servicing personnel office.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Selective Service, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

RECORD ACCESS PROCEDURES:

Appointees who wish to gain access to their records should make requests in writing, including their full name, address (state in which appointed), date of birth and Social Security Account Number for former appointees, or record Identification Number for current appointees. Requests should be addressed to: Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Civilian Personnel (Uncompensated).

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual or is derived from information he/she has supplied or is provided by the agency official with authority to appoint the individual.

SYSTEMS EXEMPTED FOR CERTAIN PROVISIONS OF THE ACT:

None.

SSS–7

SYSTEM NAME:

Suspected Violator Inventory System—SSS

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Data Management Center/ USMEPCOM Customer Support Division IT Directorate, Great Lakes, Illinois 60088.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Alleged violators of the *Military Selective Service Act* (50 U.S.C. App. 451 *et seq.*).

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated records created by matches between records contained in SSS–4 and other computer files, and other records related to non-registrants. Each record may contain the name, address, Selective Service Number (if any), Social Security Account Number (if any), date of birth, status, and disposition data relating to possible violations of the *Military Selective Service Act.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3) of the *Military Selective Service Act* (50 U.S.C. App. 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The names of individuals identified as alleged violators of the Military Selective Service Act will be checked against the SSS–4 registrant file. If the individual has registered, the incoming communication will be destroyed and no further action will be taken. If the individual is not listed in the registrant file or cannot be identified therein where the incoming communication contains sufficient identifying information on the alleged violator to permit sending correspondence to him under the automated tracking system, the name and associated information will be added to that system and the incoming communication will be used

to attempt to correspond with the alleged violator, giving him an opportunity to register. After a reasonable attempt is made to register the individual, and he neither registers nor provides documented evidence supporting exemption or where there is insufficient information to add the alleged violator to the automated tracking system, the incoming communication may be forwarded to the Department of Justice for investigation and, if applicable, returned to Selective Service with sufficient information for adding to the automated tracking system or comparison with the registrant file. When computer matches of Selective Service files result in production of a list of possible non-registrants, that list may be provided to the Department of Defense and the U.S. Coast Guard to eliminate from the list individuals not required to register. The names, dates of birth, Social Security Account Numbers, and home addresses of possible non-registrants who also have been identified as members of the Reserve components of the U.S. military services, including the U.S. Coast Guard, may be provided to the Department of Defense, including the military services and the U.S. Coast Guard, to obtain current addresses. The names, dates of birth, Social Security Account Numbers, home addresses, and disposition data on possible non-registrants who have been identified as Federal student aid recipients by the Department of Education, may be provided to the Department of Education, after processing by Selective Service, for investigation and, if applicable, forwarding to the Department of Justice for prosecution. The list may also be provided to the Internal Revenue Service to obtain current addresses of suspected non-registrants. After processing the information pertaining to suspected non-registrants, the list will be forwarded to the Department of Justice for investigation and, if applicable, prosecution.

Where Selective Service determines that information as originally submitted appears to have contained a discrepancy, the names, dates of birth, Social Security Account Numbers, and home addresses of individuals may be returned to the original sources together with information concerning the discrepancy. Information concerning the discrepancy may include correspondence from the individual concerned.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained electronically, and supporting documentation stored on microfilm.

RETRIEVABILITY:

Indexed by Selective Service Number, Social Security Account Number, name and case number (if any).

SAFEGUARDS:

a. Records are available to authorized Selective Service personnel only.

b. Paper records are converted to microfilm. A microfilm non-record copy is kept in a locked file cabinet accessible only to authorized personnel. The microfilm original record is transferred to a Federal Records Center. The paper records are destroyed after microfilming.

c. Building is secured and patrolled after normal business hours. Access is controlled by an electronic security access system.

d. Computer files will be maintained at the USMEPCOM Customer Support Division IT Directorate, Great Lakes, Illinois 60088

(1) Security guards for the building will allow access to authorized personnel only.

(2) Computer room will be secured by electronic security access system.

(3) Terminal access to the computer system will be restricted to those with valid user ID and password.

(4) A Customer Information Control system will require additional password for interactive access to data base information.

(5) A software security package will protect access to data in the system.

(6) Access to the violator section of the data base will not be possible without specific authorization by the Data Base Administrator.

RETENTION AND DISPOSAL:

Electronic source files are erased after processing into the computer system. When eligible for disposal, the computer tapes are erased. The records stored in the Suspected Violator Inventory System are retained until the suspected violator reaches 85 years of age. Paper records are destroyed by maceration after information is transferred onto microfilm and into the computer system. Original microfilm is stored at a Federal Records Center until the suspected violator reaches age 85, then destroyed. A duplicate microfilm non-record copy is retained at the Data Management Center in locked steel cabinets until no longer needed for reference purposes, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

RECORD ACCESS PROCEDURES:

If information in the system is desired, write to: Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager and furnish the following information in order to identify the individual whose records are requested:

a. Full name.

b. Date of birth.

c. Selective Service Number or Social Security Account Number.

d. Mailing address to which the reply should be mailed.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

The information in the system of records regarding alleged violators of the Military Selective Service Act is received via correspondence, telephone calls and computer matches of list of potential registrants.

SYSTEMS EXEMPTED FOR CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2) and 32 CFR 1665.6, the Selective Service System will not reveal to the suspected violator the informant's name or other identifying information relating to the informant.

SSS–8

SYSTEM NAME:

Pay Record—SSS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Department of the Interior, National Business Center, Denver, CO 80227.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Currently assigned civilian employees and former civilian employees who have separated during the current year and first prior calendar year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains payroll information such as name, grade, annual salary, hourly rate, address, Social Security Account Number, birth date, date of hire, service computation date, annual leave category, life insurance and health benefits deductions, savings bond data and other information relating to the status of the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(2) of the *Military Selective Service Act* (50 U.S.C. App. 460(b)(2) and Title 5, U.S.C.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Selected information by name and Social Security Account Number is furnished to the Internal Revenue Service and State and City taxing authorities.

Selected information by name, date of birth, Social Security Account Number is furnished to the Office of Personnel Management for retirement, life insurance and health benefit accounts.

Department of Health and Human Services for locations of parents pursuant to the *Child Support Enforcement Act* (42 U.S.C. 651 *et. esq.*)

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the *Fair Credit Report Act* (15 U.S.C. 1681a(f)) or the *Federal Claims Collection Act of 1966* (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer system with conventional media—hard drives, magnetic tape, etc.

RETRIEVABILITY:

Records are indexed by Social Security Account Number.

SAFEGUARDS:

Measures that have been taken to prevent unauthorized disclosures of records are:

a. Use of the records or any information contained therein is limited to employees whose official duties require such access.

b. Records maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosures of information; offices are locked when authorized personnel are not on duty.

c. Periodic security checks and other emergency planning.

d. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed. Records eligible for destruction are destroyed by maceration, shredding or burning.

RETENTION AND DISPOSAL:

The information on the magnetic tapes will be retained for two (2) years, and then erased. The computer printouts are retained until updated, and then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Selective Service, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

RECORD ACCESS PROCEDURES:

Current employees or former employees who wish to gain access to their records should make their request in writing, including their full name, address and Social Security Account Number and duty station. Former employees should indicate last duty station with this agency. Inquiries should be mailed to: Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Civilian Personnel.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the individual to whom it applies or is derived from information the individual supplied, or is provided by the agency official with authority to appoint the individual.

SYSTEMS EXEMPTED FOR CERTAIN PROVISIONS OF THE ACT:

None.

SSS–9

SYSTEM NAME:

Registration, Compliance and Verification (RCV) System—Registrant Registration Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Data Management Center/ USMEPCOM Customer Support Division IT Directorate, Great Lakes, Illinois 60088

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants of the Selective Service System after 1979 (born after December 31, 1959).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Registration Records:

a. Registration Form.

b. Computer tape and microfilm copies containing information provided by the registrant on Registration Form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 3, 10(b)(3) and 15(b) of the *Military Selective Service Act* (50 U.S.C. App. 453, 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The *Military Selective Service Act,* Selective Service regulations, and the President's Proclamation on Registration requires those registering with Selective Service to provide their full name, date of birth, address, sex, Social Security Account Number, if they have one, and their signature. The principal purpose of the requested information is to establish or verify a person's registration with the Selective Service System. Registration information may be shared with the following government agencies for the purposes stated:

Department of Justice—For review and processing of suspected violations of the Military Selective Service Act (MSSA), for perjury, and for defense of a civil action arising from administrative processing under such Act.

Department of State and U.S. Citizenship and Immigration Services—For collection and evaluation of data to determine a person's eligibility for entry/reentry into the United States and for United States citizenship.

Department of Defense and U.S. Coast Guard—To exchange data concerning registration, classification, induction, and examination of registrants and for identification of prospects for recruiting.

Department of Labor—To assist veterans in need of data concerning reemployment rights, and for determination of eligibility for benefits under the Workforce Investment Act.

Department of Education—To determine eligibility for student financial assistance.

U.S. Census Bureau—For the purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13.

Office of Personnel Management and U.S. Postal Service—To determine eligibility for employment.

Department of Health and Human Services—To determine a person's proper Social Security Account Number and for locating parents pursuant to the Child Support Enforcement Act.

State and Local Governments—To provide data that may constitute evidence and facilitate the enforcement of state and local law.

Alternative Service Employers—During conscription, to exchange information with employers regarding a registrant who is a conscientious objector for the purpose of placement and supervision of performance of alternative service in lieu of induction into the military service.

General Public—Registrant's name, Selective Service Registration Number,

Date of Birth and Classification, (Military Selective Service Act, Section 6, 50 U.S.C. App. 456h).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on microfilm and in the computer system. Microfilm records are indexed by Document Locator Number, which is stored in the computer record.

RETRIEVABILITY:

The system is indexed by Selective Service Number, but records can be located by searching for specific data.

SAFEGUARDS:

Measures that have been taken to prevent unauthorized disclosures of records are:

a. Records are maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosures of information; offices are locked when authorized personnel are not on duty, and are protected by an electronic security access system at all times.

b. Periodic security checks and other emergency planning.

c. Microfilm records transferred to a Federal Records Center for storage are boxed and taped; records in transit for temporary custody of another office are sealed.

d. On-line access to RIB from terminals is controlled by User Identification and password.

e. Records eligible for destruction are destroyed by maceration, shredding or burning.

RETENTION AND DISPOSAL:

Individual Processing Records:

1. Registration Form—Destroyed by maceration when its information has been transferred onto microfilm and into the computer system. Original microfilm is stored at a Federal Records Center. A microfilm non-record copy is retained at the Data Management Center, in locked steel cabinets. The copies are retained until no longer needed for reference purposes.

2. The record copy of microfilm and computer tape will be retained until the registrant reaches 85 years of age.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Selective Service, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

RECORD ACCESS PROCEDURES:

The agency office address to which inquiries should be addressed and the location at which an individual may present a request as to whether the RCV System (after 1979) contains records pertaining to himself is: Director of Selective Service, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425, Attn: Records Manager.

It is necessary to furnish the following information in order to identify the individual whose records are requested:

a. Full name of the individual.

b. Selective Service Number or Social Security Account Number, date of birth and address at the time of registration if Selective Service Number is not known.

d. Mailing address to which the reply should be mailed.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

Information contained in the Registrant Registration Records System is obtained from the individual.

SYSTEMS EXEMPTED FOR CERTAIN PROVISIONS OF THE ACT:

None.

FOR FURTHER INFORMATION CONTACT: Chief Information Officer, Office of Information Technology, Selective Service System, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Date: September 12, 2011.

Lawrence G. Romo,

Director.

[FR Doc. 2011–24044 Filed 9–19–11; 8:45 am]

BILLING CODE 8015–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12822 and #12823]

Pennsylvania Disaster #PA–00044

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–4030–DR), dated 09/12/2011.

Incident: Tropical Storm Lee.

Incident Period: 09/03/2011 and continuing.

Effective Date: 09/12/2011.

Physical Loan Application Deadline Date: 11/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/12/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/12/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Adams, Bradford, Columbia, Cumberland, Dauphin, Lancaster, Lebanon, Luzerne, Lycoming, Montour, Northumberland, Perry, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Wyoming, York.

Contiguous Counties (Economic Injury Loans Only):

Pennsylvania: Berks, Carbon, Centre, Chester, Clinton, Franklin, Juniata, Lackawanna, Lehigh, Mifflin, Monroe, Potter, Tioga, Wayne.

Maryland: Baltimore, Carroll, Cecil, Frederick, Harford.

New York: Broome, Chemung, Tioga.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128228 and for economic injury is 128230.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24081 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12820 and #12821]

Pennsylvania Disaster #PA–00042

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–4025–DR), dated 09/12/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 08/30/2011.

Effective Date: 09/12/2011.

Physical Loan Application Deadline Date: 11/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/12/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/12/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Bucks, Chester, Delaware, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Sullivan, Wyoming.

Contiguous Counties (Economic Injury Loans Only):

Pennsylvania: Berks, Bradford, Carbon, Columbia, Lackawanna, Lancaster, Lycoming, Pike, Schuylkill, Susquehanna, Wayne.

Delaware: New Castle.

Maryland: Cecil.

New Jersey: Burlington, Camden, Gloucester, Hunterdon, Mercer, Sussex, Warren.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128208 and for economic injury is 128210.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24080 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12776 and #12777]

New York Disaster Number NY–00108

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/05/2011.

Effective Date: 09/10/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Bronx, Kings, Queens, Richmond.

Contiguous Counties: (Economic Injury Loans Only):

New York: New York.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24058 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12774 and #12775]

North Carolina Disaster Number NC–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4019–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 through 09/01/2011.

Effective Date: 09/11/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Contiguous Counties: (Economic Injury Loans Only):

North Carolina: Bladen.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24069 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12776 and #12777]

New York Disaster Number NY–00108

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/05/2011.

Effective Date: 09/08/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of NEW YORK, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Columbia, Putnam, Washington.

Contiguous Counties: (Economic Injury Loans Only):

Vermont: Rutland.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24073 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12784 and #12785]

Vermont Disaster Number VT–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4022–DR), dated 09/01/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 09/02/2011.

Effective Date: 09/09/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Vermont, dated 09/01/2011 is hereby amended to establish the incident period for this disaster as beginning 08/27/2011 and continuing through 09/02/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24072 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12797 and #12798]

Connecticut Disaster Number CT–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4023–DR), dated 09/02/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 09/01/2011.

Effective Date: 09/12/2011.

Physical Loan Application Deadline Date: 11/03/2011.

EIDL Loan Application Deadline Date: 06/04/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Connecticut, dated 09/02/2011 is hereby amended to establish the incident period for this disaster as beginning 08/27/2011 and continuing through 09/01/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24070 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12815 and #12816

Texas Disaster #TX–00381

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–4029–DR), dated 09/09/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 09/09/2011.

Physical Loan Application Deadline Date: 11/08/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/09/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Bastrop

Contiguous Counties (Economic Injury Loans Only):

Texas: Caldwell, Fayette, Lee, Travis, Williamson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.000.
Homeowners without credit available elsewhere	2.500.
Businesses with credit available elsewhere	6.000.
Businesses without credit available elsewhere	4.000.
Non-profit organizations with credit available elsewhere	3.250.
Non-profit organizations without credit available elsewhere	3.000
For Economic Injury:	
Businesses & small agricultural cooperatives without credit available elsewhere	4.000.
Non-profit organizations without credit available elsewhere	3.000.

The number assigned to this disaster for physical damage is 128155 and for economic injury is 128160.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24076 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12811 and #12812]

New Hampshire Disaster Number NH–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA—4026—DR), dated 09/07/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/26/2011 through 09/06/2011.

Effective Date: 09/12/2011.

Physical Loan Application Deadline Date: 11/07/2011.

EIDL Loan Application Deadline Date: 06/07/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Hampshire, dated 09/07/2011 is hereby amended to establish the incident period for this disaster as beginning 08/26/2011 and continuing through 09/06/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24063 Filed 9–19–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7596]

Javits Report 2012

SUMMARY: In accordance with § 25 of the Arms Export Control Act (AECA), the State Department is required to provide to Congress an Arms Sale Proposal (the Javits Report) covering all sales and licensed commercial exports of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or weapons-related defense equipment for $25,000,000 or more, which are considered eligible for approval. The Directorate of Defense Trade Controls (DDTC) is soliciting input regarding licensed commercial exports (i.e., direct commercial sales) for the report.

DATES: All Javits Report 2012 submissions regarding direct commercial sales (DCS) must be received by October 7, 2011.

FOR FURTHER INFORMATION CONTACT: Members of the public who need additional information regarding the DCS portion of the Javits Report should contact Patricia Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; or e-mail *SlyghPC@State.gov.*

SUPPLEMENTARY INFORMATION: The Javits Report 2012 is an Arms Sales Proposal, to Congress, which covers all sales and licensed commercial exports under the Arms Export Control Act of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or weapons-related defense equipment for $25,000,000 or more, which are considered eligible for approval during calendar year 2012, together with an indication of which licensed commercial exports are deemed most likely to result in the issuance of an export license during 2012.

Javits Report entries for proposed Direct Commercial Sales should be submitted on the DS–4048 form to *javitsreport@state.gov*, no later than October 7, 2011. The DS–4048 form and instructions are located on the DDTC's Web site at *http://www.pmddtc.state.gov/reports/javits_report.html.*

Submissions should be limited to those activities for which a prior marketing license or other approval from DDTC has been authorized and ongoing contract negotiations will result in either a direct commercial sale in 2012 or the likely award of a DCS contract to the reporting company during 2012. To complete the DS–4048 form, the following information is required: Country to which sale is proposed; Category of proposed sale (aircraft, missile, ships, satellite, etc.); Type of sale (report only direct commercial sale in response to this request); Value of proposed sale and quantity of items anticipated. Include a concise description of the article to be sold, including status of the proposed sale or export any details of what is expected to be included in the contract (maintenance, upgrade, etc.).

Dated: September 7, 2011.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2011–24114 Filed 9–19–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 6870]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct five open meetings to prepare for upcoming events at the International Maritime Organization (IMO) in London, United Kingdom. Two of these meetings will be held on 9:30 a.m. on Thursday, October 13, 2011, and on Thursday, November 17, 2011, respectively, at the 6th floor South conference room of the Federal Communications Commission Headquarters Building, 445 12th Street, SW., Washington, DC 20554. Two additional meetings will be held at 9:30 a.m. on Thursday, December 15, 2011, and at 9:30 a.m. on Thursday, January 12, 2012, in Room 10–1420 of the United States Coast Guard Headquarters: Jemal Building, 1900 Half Street, SW., Washington, DC 20593–0001. The primary purpose of these four

meetings is to prepare for the sixteenth Session of the International Maritime Organization's (IMO) Sub-Committee on Radio Communications, Search and Rescue (COMSAR 16) to be held at the IMO Headquarters, United Kingdom, March 12–16, 2012. The primary matters to be considered at COMSAR 16 include:

—Opening of the session
—Adoption of the agenda
—Decisions of other IMO bodies
—Global Maritime Distress and Safety System (GMDSS)
—ITU maritime radiocommunication matters
—Consideration of developments in Inmarsat and Cospas-Sarsat
—Search and Rescue (SAR)
—Developments in maritime radiocommunication systems and technology
—Development of amendments to the IAMSAR Manual
—Development of measures to avoid false distress alerts
—Development of measures to protect the safety of persons rescued at sea
—Development of an e-navigation strategy implementation plan
—Revision of the Recommendation for the protection of the AIS VHF Data Link (resolution MSC.140(76)
—Consideration of LRIT related matters
—Biennial agenda and provisional agenda for COMSAR 17
—Election of Chairman and Vice-Chairman for 2013
—Any other business
—Report to the Maritime Safety Committee

Finally, an open meeting will be held at 9:30 a.m. on Wednesday, November 2, 2011, in Room 2501 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of this meeting is to prepare for the twenty-sixth Session of the International Maritime Organization (IMO) Council Extraordinary Session (C/ES 26) to be held at the IMO Headquarters, United Kingdom from November 17 to 18, 2011; the twenty-seventh Session IMO Assembly (A 27) to be held at the IMO Headquarters from November 21 to 30, 2011; and the one hundred and seventh Session of the IMO Council (C 107) to be held at IMO Headquarters on December 1, 2011. The primary matters to be considered at C/ES 26 include:

—Adoption of the agenda
—Report of the Secretary-General on credentials
—Strategy and planning
—Organizational reforms
—Resource management
—Results-based budget for 2012–2013
—Consideration of the report of the Marine Environment Protection Committee
—Consideration of the report of the Facilitation Committee
—Report on the 33rd Consultative Meeting of Contracting Parties to the London Convention 1972 and the 6th Meeting of Contracting Parties to the 1996 Protocol to the London Convention
—Protection of vital shipping lanes
—Report of the Council to the Assembly on the work of the Organization since the twenty-sixth regular session of the Assembly
—External relations
—Report on the status of the Convention and membership of the Organization
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
—Substantive items for inclusion in the provisional agendas for the next two sessions of the Council
—Supplementary agenda items, if any

The primary matters to be considered at A 27 include:

—Adoption of the agenda
—Election of the President and the Vice-Presidents of the Assembly
—Application of Article 61 of the IMO Convention—Report of the Council to the Assembly on any requests by Members for waiver
—Establishment of committees of the Assembly
—Consideration of the reports of the committees of the Assembly
—Report of the Council to the Assembly on the work of the Organization since the twenty-sixth regular session of the Assembly
—Strategy and planning
—Voluntary IMO Member State Audit Scheme
—Consideration of the reports and recommendations of the Maritime Safety Committee
—Consideration of the reports and recommendations of the Legal Committee
—Consideration of the reports and recommendations of the Marine Environment Protection Committee
—Consideration of the reports and recommendations of the Technical Co-operation Committee
—Consideration of the reports and recommendations of the Facilitation Committee
—Report on diplomatic conferences
—Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the 1996 Protocol
—Resource management
—Financial sustainability of the World Maritime University
—Global maritime training institutions
—External relations
—Report on the status of the Convention and membership of the Organization
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
—Election of Members of the Council, as provided for in Articles 16 and 17 of the IMO Convention
—Election of Members of the IMO Staff Pension Committee
—Appointment of the External Auditor
—Approval of the appointment of the Secretary-General
—Date and place of the twenty-eighth regular session of the Assembly
—Farewell to Mr. E.E. Mitropoulos
—Supplementary agenda items, if any

The primary matters to be considered at C 107 include:

—Election of the Chairman and Vice-Chairman
—Adoption of the agenda
—Substantive items for inclusion in the provisional agendas for the next two sessions of the Council
—Date and place of the next session of the Council
—Supplementary agenda items, if any

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend any of the five meetings should contact the following coordinators at least 7 days prior to the meetings:

—For the COMSAR 16 meetings on: October 13, 2011; November 17, 2011; December 15, 2011; and January 12, 2012, contact Mr. Russell Levin, by e-mail at *Russell.S.Levin@uscg.mil*, by phone at (202) 475–3555, or in writing at Commandant (CG–652), U.S. Coast Guard, 2100 2nd St, SW, STOP 7101, Washington, DC 20593–7101 not later than 7 days prior to each meeting. Requests made after 7 days prior to each meeting might not be able to be accommodated.
—For the A27/CES26/C107 meeting on November 2, 2011, contact LCDR Matthew Frazee, by e-mail at *Matthew.P.Frazee@uscg.mil,* by phone at (202) 372–1350, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW, STOP 7126, Washington, DC 20593–7126 not later than October 26, 2011, 7 days prior to the meeting. Requests made after October 26, 2011 might not be able to be accommodated.

Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo.*

Dated: September 14, 2011.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2011–24115 Filed 9–19–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 6869]

Announcement of Meeting of the International Telecommunication Advisory Committee

Summary: This notice announces a meeting of the International Telecommunication Advisory Subcommittees (ITAC) on October 6, 2011, 2–4 p.m. EDT, at the Department of State, 2201 C Street, NW., Washington, DC 20520, to seek further advice from the telecommunications industry on (a) whether the U.S. should agree that Study Group 15's draft new Recommendation G.tp-oam (Operations, Administration and Maintenance mechanism for MPLS–TP in Packet Transport Network (PTN)) should be considered for approval at the December Study Group meeting, (b) the policy that the U.S. should invoke during the approval process at the meeting, and (c) from the technical standpoint, what is the range of acceptable alternative positions that the U.S. could take during the approval process.

This meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting. People desiring further information on this meeting, including those wishing to request reasonable accommodation to attend the meeting, must contact the Secretariat at *minardje@state.gov,* by September 30, 2011.

The Department of State customarily makes informal distribution of documents and supports informal discussions of relevant matters on an email listserver named sgb-15. People desiring to join this list should apply to the Secretariat.

Dated: September 14, 2011.

Franz J.G. Zichy,

International Communications & Information Policy, U.S. Department of State.

[FR Doc. 2011–24116 Filed 9–19–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice: 7597]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 10 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2861.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to the Congress or as soon thereafter as practicable.

July 05, 2011 (Transmittal Number DDTC 11–003)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services to support Proton Rocket Launch Vehicle integration and launch of the Astra 2F commercial communications satellite for the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

June 24, 2011 (Transmittal Number DDTC 11–026)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement to a Manufacturing Licensing Agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more. The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of military flex and rigid circuit assemblies for use in defense systems for end-use by U.S. customers.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

June 24, 2011 (Transmittal Number DDTC 11–037)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services to

support the design, manufacturing and delivery phases of the Azerspace/Africasat-1a Commercial Communications Satellite Program for Azerbaijan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

June 21, 2011 (Transmittal Number DDTC 11–039)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea for the manufacture, assembly, test, support, repair, overhaul, and sale of T–62T–46LC–2A auxiliary power units for T–50 aircraft variants owned and operated by the Republic of Korea Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

June 24, 2011 (Transmittal Number DDTC 11–040)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including technical data, or defense services in the amount of $25,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services for Enhanced Position Location Reporting System (EPLRS), EPLRS Extended Frequency (EPLRS–XF) and MicroLight Radio Equipment for end use by the Commonwealth of Australia, Department of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

July 05, 2011 (Transmittal Number DDTC 11–041)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Japan for the manufacture, assembly, inspection, installation, test, and sale of auxiliary power units for use in CH–47, SH–60K, UH–60J, SH–60, and UH–60 helicopters and landing craft air cushion (LCACs) vehicles owned and operated by the Japanese Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

June 24, 2011 (Transmittal Number DDTC 11–049)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services abroad in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to support the manufacture of SPY1–D/F Components for the United States Navy Fleet and the United States Navy Foreign Military Sales Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

June 24, 2011 (Transmittal Number DDTC 11–050)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification

of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services, to Spain for the collaboration on new designs, design improvements, design modifications, detailed engineering review, consultation, analysis of operation, and other engineering efforts related to the design of sporting guns and rifles and associated components and spare parts, for delivery to and end-use by a firearms manufacturer in Spain.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

June 24, 2011 (Transmittal Number DDTC 11–055)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services, to Japan for the manufacture and assembly of parts and components for the Strapdown Inertial System and the HDC301 Computer, for delivery to and end-use by the Japan Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

June 24, 2011 (Transmittal Number DDTC 11–061)

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services to support Proton Rocket Launch Vehicle integration and launch of the EchoStar 16 commercial communications satellite for the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

Acting Assistant Secretary, Legislative Affairs.

Dated: July 22, 2011.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2011–24113 Filed 9–19–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Program for Capital Grants for Rail Line Relocation and Improvement Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding availability.

SUMMARY: This notice details the application requirements and procedures for obtaining funding for eligible rail line relocation and improvement projects. The opportunities described in this notice are available under Catalog of Federal Domestic Assistance (CFDA) number 20.320.

Notice to Applicants: FRA recommends applicants read this notice in its entirety prior to preparing application materials. There are several administrative prerequisites that applicants must comply with in order to submit an application (see Section 4 of this notice). Additionally, applicants should note that the required Project Narrative/Statement of Work component of the application package may not exceed 35 pages in length. Failure to adhere to this page limitation may result in the application being removed from consideration for award.

DATES: Applications for funding under this solicitation are due no later than 5 p.m. E.D.T., October 19, 2011, and must be submitted via *Grants.gov.* See Section 4 for additional information regarding the application process. FRA reserves the right to modify this deadline.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice and the grants program, please contact John Winkle via e-mail at *John.Winkle@dot.gov,* or by *mail:* U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Room W38–311, Washington, DC 20590 *Attention:* John Winkle.

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Section 1: Funding Opportunity Description

1.1 Authority

The purpose of this notice is to solicit applications for eligible rail line relocation and improvement projects. To assist State and local governments in mitigating the adverse effects created by the presence of rail infrastructure, Congress, in the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005, codified at 49 U.S.C. 20154) authorized the Program for Capital Grants for Rail Line Relocation and Improvement Projects

(Program). SAFETEA–LU also directed FRA to promulgate a regulation to establish the Program. That final rule was published on July 11, 2008 and can be found at 73 FR 39875 (49 CFR part 262). SAFETEA–LU expired at the end of FY 2009 and has since been authorized by a series of short-term extensions. The most recent extension was the Surface Transportation Extension Act of 2011 (Pub. L. 112–5, 125 Stat. 14, March 4, 2011).

1.2 Funding Approach

At least $11,588,085 is available for awards under this solicitation, including $10,532,000 provided under the FY 2011 Department of Defense and Full-Year Continuing Appropriations Act (Pub. L. 112–10, April 15, 2011) and $1,056,085 remaining from a previous competition for funding provided under the FY 2010 Consolidated Appropriations Act (Pub. L. 111–117, December 16, 2009). Additional funding may be available at the time of award, including savings that result from previously awarded projects that are completed under budget, funds withdrawn from previously awarded projects that are not proceeding satisfactorily, or other sources.

Section 2: Award Information

This will be the third round of competitive funding under the Program. In September 2009, FRA announced the selection of seven projects to receive a total of $14,315,300. In September 2011, FRA announced the selection of eight projects to receive $19,446,415. As with these previous competitions, FRA anticipates making multiple awards from the $11,588,085 available. As such, FRA expects applicants to tailor their applications and proposed project scopes accordingly. There are no minimum or maximum dollar thresholds for awards, and FRA may choose to award a grant for less than the amount requested in the application. The funding provided under these grants will be made available to grantees on a reimbursement basis.

Section 3: Eligibility Information

Applications for rail line relocation and improvement projects will be required to meet minimum requirements related to applicant eligibility, project eligibility, and the fulfillment of other prerequisites. To the extent that an application's substance exceeds the minimum eligibility requirements described below, such qualifications will be considered in evaluating the merits of an application (see Section 5 for selection criteria).

3.1 Eligible Applicants

Only States, political subdivisions of States, and the District of Columbia are eligible for grants under the Program (see 49 CFR 262.3 and 262.7). FRA considers political subdivisions of States to be entities such as cities, counties, townships, boroughs, and villages. If an applicant is not one of these traditional political subdivisions, then the applicant must prove to FRA's satisfaction that, *under the applicable State law,* the applicant is a political subdivision of the State.

In making this determination, FRA will look primarily to the intent of the State legislature when creating the entity. Thus, FRA will likely find persuasive enabling legislation establishing the entity if the legislation states clearly that the entity is a political subdivision of the State. Similarly, FRA will also consider State appellate court opinions where the court finds that the entity is a political subdivision of the State. Opinions from the State Attorney General also may be used to bolster the above authorities. If nothing conclusively states that the entity is a political subdivision of the State, FRA will review all submitted information and attempt to determine eligibility. *FRA wants to emphasize that the burden of establishing eligibility is on the applicant and all information supporting an applicant's position that it is eligible should be submitted along with the application.* If applicant eligibility is a potential issue, the applicant is encouraged to contact FRA before submitting an application and FRA will make an eligibility determination.

3.2 Cost Sharing and Matching

In accordance with SAFETEA–LU, an approved applicant, or other non-Federal party, must pay at least 10 percent of the costs of any project funded by a grant awarded through the Program. Applicants must specify the non-Federal match amount in their application. Applicants should indicate whether funding made available through grants provided under this Program, together with committed funding from other sources, including the required non-Federal match, will be sufficient to complete the overall project or a discrete portion of the project.

An applicant's contribution toward the cost of its proposed project may be in the form of cash or permitted in-kind contributions (see 49 CFR 262.13). As part of its application, an applicant offering an in-kind contribution must provide a documented estimate of the monetary value of any such contribution and its eligibility under 49 CFR 262.13. All in-kind contributions must be allowable, reasonable, allocable, and in accordance with applicable Office of Management and Budget (OMB) cost principles, and must not represent double-counting of costs otherwise accounted for in an indirect cost rate pursuant to which the applicant will seek reimbursement.

3.3 Eligible Projects

In accordance with SAFETEA–LU, eligible projects are construction projects undertaken for the improvement of the route or structure of a rail line that either: (1) Are carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development; or (2) involve a lateral or vertical relocation of any portion of the rail line (see 49 CFR 262.7).

Eligible construction projects are defined in 49 CFR 262.3 as locating, surveying, and mapping; track and related structure installation, restoration, and rehabilitation; acquisition of rights-of-way; relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing; and elimination of obstacles and relocation of utilities. Pre-construction activities, such as preliminary engineering, design, and costs associated with project-level compliance with the National Environmental Policy Act (NEPA), are considered part of the overall construction project (49 CFR 262.3(6)) and are also eligible for funding. Because section 9002 of SAFETEA–LU directs that only construction costs are eligible costs, *activities such as planning studies and feasibility analyses are not eligible for funding.*

FRA wants to emphasize that in order for the project to be eligible, *the rail line must be the element that is moved or improved.* Grade separation projects that involve raising or lowering the road, for example, are not eligible. Similarly, quiet zones and stand-alone grade crossing improvement projects are not eligible. Station improvement projects where there is little or no related track work are also not eligible. As explained in the Final Rule, if station or grade crossing improvements are part of an otherwise eligible rail line relocation or improvement project, then the costs associated with the grade crossing or station work *may* be eligible (see 73 FR 39879). However, the majority of the proposed project scope must involve relocating or improving a rail line.

If an applicant is undertaking a larger project that would be eligible, but is applying to FRA for funding for a small portion that is not eligible (*e.g.,* an applicant is undertaking a large rail improvement involving upgrading grade crossing equipment and applies to FRA for funds to cover the grade crossing improvements), the fact that the larger project would be eligible does not mean that FRA can fund the smaller, ineligible project.

Finally, if an applicant is applying for an improvement project, FRA emphasizes that, in accordance with SAFETEA–LU, *the project must mitigate the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development.* Projects that construct new rail infrastructure solely for the purposes of promoting or attracting economic development are not eligible, as they do not mitigate the adverse effects of rail traffic. Relocation projects are not subject to this requirement. If project eligibility is a potential issue, applicants are encouraged to contact FRA before submitting an application and FRA will make an eligibility determination.

Section 4: Application and Submission Information

4.1 Application Procedures

4.1.1 Applying Online

All applications must be submitted through *Grants.gov* by 5 p.m. E.D.T. on October 19, 2011. Applicants are strongly encouraged to apply early to ensure that all materials are received before this deadline.

To apply for funding through *Grants.gov,* applicants must be properly registered. Complete instructions on how to register and submit an application can be found at *Grants.gov.*

Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

In order to apply for funding under this announcement and to apply for funding through *Grants.gov,* all applicants are required to complete the following:

1. *Acquire a DUNS Number.* A Data Universal Numbering System (DUNS) number is required for *Grants.gov* registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Applicants may obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dnb.com/us.*

2. *Acquire or Renew Registration With the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance must maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in *Grants.gov.* The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and sub recipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with CCR, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of the application deadline. Information about CCR registration procedures can be accessed at *http://www.ccr.gov.*

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Applicants must complete an AOR profile on *Grants.gov* and create a username and password. Applicants must use the organization's DUNS number to complete this step. Additional information about the registration process is available at *http://www.Grants.gov/applicants/get_registered.jsp.*

4. *Acquire Authorization for Your AOR From the E–Business Point of Contact (E-Biz POC).* The Applicant's E-Biz POC must log in to *Grants.gov* to confirm a representative as an AOR. Please note that there can be more than one AOR at an organization.

5. *Search for the Funding Opportunity on Grants.gov.* The Catalog of Federal Domestic Assistance (CFDA) number for this opportunity is 20.320. It is titled ''Rail Line Relocation and Improvement.''

6. *Submit an Application Addressing All of the Requirements Outlined in This Funding Availability Announcement.* Within 24 to 48 hours after submitting an electronic application, an applicant should receive an email validation message from *Grants.gov.* The validation message will explain whether the application has been received and validated or rejected, with an explanation. Applicants are urged to submit an application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

If you experience difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays).

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may imbed picture files, such as .jpg, .gif, and .bmp, in document files, please do not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

4.1.2 Address To Request/Submit Application Package

To request a hard copy of the application package, please contact John Winkle, Office of Railroad Policy and Development (RPD–11), Federal Railroad Administration, 1200 New Jersey Avenue, SE., Room W38–311, Washington, DC 20590. *Phone:* (202) 493–6360; *Fax:* (202) 493–6333; *E-mail: John.Winkle@DOT.gov.*

4.2 Content of Application

Required documents for the application package are outlined in the checklist below. Applications for construction activities or eligible pre-construction activities (preliminary engineering, design, project-level NEPA compliance) require the submission of different OMB Standard Forms. If an application is requesting funding for both pre-construction and construction activities, submit only the forms required for construction projects. Further information on the requirements for completing the Project Narrative/Statement of Work and Detailed Budget are provided in Sections 4.2.1 and 4.2.2, respectively.

Documents	Project type	
	Construction	PE/design/ NEPA
FRA Forms		
☐ Project Narrative/Statement of Work (see 4.2.1)	✓	✓
☐ Detailed Budget (see 4.2.2)	✓	✓
☐ FRA's Additional Assurance and Certifications (available at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf*)	✓	✓
OMB Standard Forms		
☐ Application for Federal Assistance	✓	✓
☐ SF 424A: Budget Information-Non Construction		✓
☐ SF 424B: Assurances-Non Construction		✓
☐ SF 424C: Budget Information-Construction	✓	
☐ SF 424D: Assurances-Construction	✓	
☐ SF LLL: Disclosure of Lobbying Activities	✓	✓

Applicants must complete and submit all components of the application package; failure to do so may result in the application being removed from consideration for award. FRA welcomes the submission of other relevant supporting documentation that may have been developed by the applicant (planning, NEPA, engineering and design documentation, *etc.*), and encourages the applicant to submit such supporting documentation as an attachment to the application via *Grants.gov.* For any required or supporting application materials that an applicant is unable to submit via *Grants.gov* (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to the address listed under Section 4.1.2. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

4.2.1 Project Narrative/Statement of Work

The following points describe the minimum content which will be required in the Project Narrative/ Statement of Work elements of grant applications. These requirements must be satisfied through a narrative statement submitted by the applicant, and may be supported by spreadsheet documents, tables, drawings, and other materials, as appropriate. FRA recommends that applicants read this section carefully and submit all required information. *If an application does not address each of these requirements to FRA's satisfaction, the application may be considered incomplete and removed from consideration for award.* Each Project Narrative/Statement of Work must:

1. Designate a point of contact for the applicant and provide his or her name and contact information, including phone number, mailing address and e-mail address. The point of contact must be an employee of an eligible applicant (*i.e.,* a State employee, or an employee of a political subdivision of a State, or an employee of the District of Columbia).

2. Indicate the amount of Federal funding requested from the Program, proposed non-Federal match, and total project cost. Additionally, identify any other sources of Federal funds committed to the project, as well as any pending Federal requests. Finally, specify whether Federal funding has ever previously been sought for the project and not secured, and name the Federal program and fiscal year from which the funding was requested.

3. Explain how the applicant is an eligible applicant. For a full discussion of how an applicant can meet this burden, see Section 3.1 Eligible Applicants, above.

4. Include a detailed project description with an explanation of how the project is an eligible project. For a full discussion of how an applicant can meet this burden, see Section 3.3 Eligible Projects, above.

5. Include a thorough discussion of how the project meets all of the selection criteria. Applicants should note that FRA evaluates applications based upon the selection criteria. If an application does not sufficiently address the selection criteria, FRA will have little or no basis on which to evaluate the application; thus, it will likely not be a competitive application. The selection criteria are described in detail in Section 5.2, below.

6. Provide a detailed scope of work for the proposed project and include the anticipated project schedule. Describe the proposed project's physical location (as applicable), and include any drawings, plans, or schematics that have been prepared relating to the proposed project. If the funding from the Program is only going to be a component of the overall funding for the project, describe the complete project and specify which component will involve FRA funding. Applications should include feasibility determinations and cost estimates, if completed. FRA will more favorably consider applications that include these types of studies, as they demonstrate that an applicant has a definite understanding of the scope and cost of the project. In submitting applications, applicants should be mindful that the Program, as created by Congress and, as further described in the Final Rule, is focused upon construction projects (see 49 CFR 262.3 and 262.7). If FRA approves a project for funding, allowable costs (i.e., costs that can qualify for reimbursement from Federal funds or as part of the required non-Federal match) will have to directly support project construction. Section 262.3 identifies the types of activities that are associated with ''construction'' and thus are potentially allowable. In terms of project development, FRA will consider as potentially allowable any costs associated with the preparation of architectural and engineering plans, project cost estimates, and project-specific construction-related costs (including costs associated with securing environmental clearance as described in § 262.15 of the Final Rule). As discussed above under Section 3.3 Eligible Projects, FRA will not consider any costs associated with planning studies and similar analyses as allowable costs. For approved projects, FRA may also consider reimbursement of eligible construction-related

expenditures incurred after the enactment of the FY 2011 Department of Defense and Full-Year Continuing Appropriations Act (April 15, 2011). However, such costs will be considered for reimbursement only to the extent that they are otherwise allowable under the applicable cost principles. To the extent such pre-award costs are incurred prior to the date of submission of an application, the application must show in detail what costs have been incurred in order for such costs to be considered for reimbursement. Projects for which construction activities commenced prior to receipt of an FRA environmental determination under NEPA will not be eligible for funding.

7. Describe proposed project implementation and project management arrangements. Include descriptions of expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting.

8. Describe the anticipated public and private benefits associated with the proposed project and the applicant's assessment of how those benefits outweigh the costs of the proposed project (see 49 CFR 262.11(b)). Identify any financial contributions or commitments the applicant has secured from private entities that are expected to benefit from the project. Although FRA will weigh all of the selection criteria, potential applicants should be aware that FRA is seeking the maximum public benefit from these limited funds. Moreover, in directing FRA to establish the Program, Congress instructed FRA to consider the feasibility of seeking financial contributions or commitments from private entities involved with projects in proportion to the expected benefits that would accrue to those entities. As FRA explained in the preamble to the Final Rule, however, FRA will apply all the selection criteria and will not disfavor one application over another because of the amount requested.

9. Describe anticipated environmental or historic preservation impacts associated with the proposed project, any environmental or historic preservation analyses that have been prepared, and progress toward completing any environmental documentation or clearance required for the proposed project under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), section 4(f) of the DOT Act, the Clean Water Act, or other applicable Federal or State laws. Refer to 49 CFR 262.15 for further guidance.

Generally, grant recipients may not expend any of the funds provided in an award on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the NEPA, the NHPA (16 U.S.C. 470(f)), and related laws and regulations have been completed and FRA has provided the grant recipient with a written notice authorizing them to proceed.

In instances where NEPA approval has not been secured at the time of grant award, grant recipients are required to assist FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 CFR part 1500 *et seq.*), FRA's ''Procedures for Considering Environmental Impacts'' (45 FR 40854, June 16, 1980, as revised May 26, 1999, 64 FR 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under an award, grant recipients may be required to conduct certain environmental analyses and to prepare and submit to FRA draft documents required under NEPA, NHPA, and related statutes and regulations.

No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials shall be used by grant recipients without the prior written concurrence of FRA. Grant recipients shall assist FRA in complying with these requirements of 49 U.S.C. 303(c).

Applicants are advised to consult with the FRA's Office of Railroad Policy and Development before initiating any NEPA, NHPA or Section 4(f) environmental or historic preservation reviews.

10. Format: Excluding spreadsheets, drawings, and tables, the Project Narrative/Statement of Work for grant applications may not exceed 35 pages in length. Failure to adhere to this page limitation may result in the application being removed from consideration for award. With the exclusion of oversized engineering drawings (which may be submitted in hard copy to the FRA at the address above), all application materials should be submitted as attachments through *Grants.gov*. Spreadsheets consisting of budget or financial information should be submitted via *Grants.gov* as Microsoft Excel (or compatible) documents.

4.4.2 Detailed Budget

Applicants must present a detailed budget for the proposed project that includes both Federal funds and matching funds. Items of cost included in the budget must be reasonable, allocable and necessary for the project.

For a construction project, at a minimum, the budget should separate total cost of the project into the following categories, if applicable: (1) Administrative and legal expenses; (2) Land, structures, rights-of-way, and appraisals; (3) Relocation expenses and payments; (4) Architectural and engineering fees; (5) Project inspection fees; (6) Site work; (7) Demolition and removal; (8) Construction labor, supervision, management, and materials, by type (*e.g.* ties, rail, signals, switches); (9) Equipment; (10) Miscellaneous; and (11) Contingencies.

For a non-construction project (*i.e.* a project involving only eligible pre-construction activities such as preliminary engineering, design, project-level NEPA compliance), at a minimum, the budget should separate total cost of the project into the following categories, if applicable: (1) Personnel; (2) Fringe Benefits; (3) Travel; (4) Equipment; (5) Supplies; (6) Consultants/Contracts; (7) Other; and (8) Indirect Costs.

See Appendix 3 of this solicitation for more information on project budgets.

4.3 Submission Dates and Times

Complete applications must be submitted to *Grants.gov* (as specified in Section 4.1) no later than 5 p.m. E.D.T., October 19, 2011. *Grants.gov* will send the applicant an automated email confirming receipt of the application. Supporting documentation that cannot be submitted electronically may be sent by courier service with a waybill receipt stamped no later than 5 p.m. E.D.T., October 19, 2011. FRA will email the applicant to confirm receipt of supporting documentation sent by courier service.

Subject to demonstration of unanticipated extenuating circumstances, FRA may, but is not obligated to, consider application materials submitted after the deadlines prescribed above.

FRA reserves the right to contact applicants with any concerns, questions, or comments related to applications.

4.4 Intergovernmental Review

Executive Order 12372 requires applicants from State and local units of

government or other organizations providing services within a State to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if this program has been selected for review by the State. Applicants must contact their State SPOC to determine if the program has been selected for State review. Executive Order 12372 can be referenced at *http://www.fws.gov/policy/library/rgeo12372.pdf.* The names and addresses of the SPOCs are listed on OMB's home page available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Section 5: Application Review Information

5.1 Application Review and Selection Process

Applications will proceed through a three-part review process:

1. Screening for completeness and eligibility;

2. Evaluation of eligible applications by technical panels applying the selection criteria; and

3. Project selection by the FRA Administrator.

Each application will first be screened for completeness (containing all required documentation outlined in Section 4.2) and eligibility (requirements outlined in Section 3). Eligible and complete applications will then be evaluated by technical panels consisting of subject-matter experts against the selection criteria (outlined in Section 5.2). The ratings assigned by the technical panels will not in themselves constitute the final award determination. In accordance with 49 CFR 262.9(f), the FRA Administrator may take into account other factors determined to be relevant to achieving the goals of the Program when making final award decisions.

5.2 Selection Criteria

FRA will consider the following selection factors in evaluating applications for grants under this program (see 49 CFR 262.9):

1. The capability of the applicant to fund the project without Federal grant funding;

2. The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce;

3. The effects of the rail line, relocated or improved as proposed, on the freight rail and passenger rail operations on the line;

4. Equitable treatment of the various regions of the United States;

5. Any other factors FRA determines to be relevant in assessing the effectiveness and/or efficiency of the grant application, including the cost-effectiveness of the proposed project in terms of benefits achieved in relation to the funds expended. In the preamble to the Final Rule, FRA provided an extensive, but not exhaustive, list of possible data items that could be used to support a cost-effectiveness determination. That list can be found at 73 FR 39875.

Section 6: Award Administration Information

6.1 Award Notices

Applications selected for funding will be announced after the application review period. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. Notification of a selected application is not an authorization to begin proposed project activities.

The period of performance for this grant program is dependent on the project. However, any unobligated funds will be deobligated at the end of the 90 day close-out period, provided for in Appendix 2.4. Extensions to the period of performance will be considered only through written requests to FRA with specific and compelling justifications why an extension is required.

6.2 Administrative and National Policy Requirements

The grantee and any subgrantee shall comply with all applicable laws and regulations. For a non-exclusive list of regulations commonly applicable to FRA grants refer to Appendix 1.

6.3 General Requirements

Grant recipients must comply with reporting requirements. All post-award information pertaining to reporting, auditing, monitoring, and the close-out process is detailed in Appendix 2.

Section 7: Agency Contact

For further information regarding this notice and the grants program, please contact John Winkle via e-mail at *John.Winkle@dot.gov,* or by *mail:* U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Room W38–311, Washington, DC 20590 Attention: John Winkle.

Appendix 1: Administrative and National Policy Requirements

Appendix 1.1 Standard Financial and Program Administration Requirements

Grant recipients must follow all standard financial and program administration requirements, including:

Administrative Requirements

- 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 49 CFR part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110).

Cost Principles

- 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).
- 2 CFR part 220, Cost Principles for Educational Institutions (OMB Circular A–21).
- 2 CFR part 230, Cost Principles for Non-Profit Organizations (OMB A–122).
- Federal Acquisition Regulations (FAR), part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations.

Audit Requirements

- OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations.

Appendix 1.2 Administrative and National Policy Requirements

Grant recipients must follow all administrative and national policy requirements including: procurement standards, compliance with Federal civil rights laws and regulations, disadvantaged business enterprises (DBE), debarment and suspension, drug-free workplace, FRA's and OMB's Assurances and Certifications, Americans with Disabilities Act (ADA), environmental protection, National Environmental Policy Act (NEPA), and environmental justice.

Appendix 1.3 Freedom of Information Act (FOIA)

As a Federal agency, FRA is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552), which generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Grant applications and related materials submitted by applicants pursuant to this guidance will become agency records, and thus are subject to the FOIA and to public release through individual FOIA requests. FRA also recognizes that certain information submitted in support of an application for funding in accordance with this guidance could be exempt from public release under FOIA as a result of the application of one of the FOIA exemptions,

most particularly Exemption 4, which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)). In the context of this grant program, commercial or financial information obtained from a person could be confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained (see *National Parks & Conservation Association* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974)). Entities seeking exempt treatment must provide a detailed statement supporting and justifying the request and should follow FRA's existing procedures for requesting confidential treatment in the railroad safety context found at 49 CFR 209.11. As noted in the Department's FOIA implementing regulation (49 CFR part 7), the burden is on the entity requesting confidential treatment to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed (see 49 CFR 7.17). The final decision as to whether the information meets the standards of Exemption 4 rests with FRA.

Appendix 2: Additional Information on Award Administration and Grant Conditions

Appendix 2.1 Reporting Requirements

Reporting requirements must be met throughout the life of the grant (additional detail will be included in the award package provided to selected applicants).

• Progress Reports—Progress reports are to be submitted quarterly. These reports must relate the state of completion of items in the Statement of Work to expenditures of the relevant budget elements. The grant recipient must furnish the quarterly progress report to the FRA on or before the 30th calendar day of the month following the end of the quarter being reported. Grantees must submit reports for the periods: January 1- March 31, April 1–June 30, July 1–September 30, and October 1–December 31. Each quarterly report must set forth concise statements concerning activities relevant to the project, and should include, but not be limited to, the following: (a) An account of significant progress (findings, events, trends, *etc.*) made during the reporting period; (b) a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in the agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA, or a statement that no problems were encountered; and (c) an outline of work and activities planned for the next reporting period.

• Quarterly Federal Financial Report (SF–425)—The Grantee must submit a quarterly Federal financial report electronically in FRA's web-based grant management system, GrantSolutions, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported (*e.g.,* for quarter ending March 31, the SF–425 is due no later than April 30). A report must be submitted for every quarter of the period of performance, including partial calendar quarters, as well as for periods where no grant activity occurs. The Grantee must use SF–425, Federal Financial Report, in accordance with the instructions accompanying the form, to report all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income.

• Interim Report(s)—If required, interim reports will be due at intervals specified in the Statement of Work and must be submitted to FRA.

• Final Report(s)—Within 90 days of the Project completion date or termination by FRA, the Grantee must submit a Summary Project Report in the GrantSolutions system. This report should detail the results and benefits of the Grantee's improvement efforts.

• Reports, Presentations and Other Deliverables—Whether for technical examination, administrative review, or publication, all submittals shall be of a professional quality and suitable for their intended purpose. Due dates for submittals shall be based on the specified intervals or days from the effective date of the agreement.

Appendix 2.2 Audit Requirements

Grant recipients that expend $500,000 or more of Federal funds during their fiscal year, combined from all sources, are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with U.S. General Accountability Office, Government Auditing Standards, located at *http://www.gao.gov/govaud/ybk01.htm,* and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Currently, audit reports must be submitted to the Federal Audit Clearinghouse no later than nine months after the end of the recipient's fiscal year. In addition, FRA and the Comptroller General of the United States must have access to any books, documents, and records of grant recipients for audit and examination purposes. The grant recipient will also give FRA or the Comptroller, through any authorized representative, access to, and the right to examine all records, books, papers or documents related to the grant. Grant recipients must require that sub-grantees comply with the audit requirements set forth in OMB Circular A–133. Grant recipients are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

Appendix 2.3 Monitoring Requirements

Grant recipients will be monitored periodically by FRA to ensure that the project goals, objectives, performance requirements, timelines, milestones, budgets, and other related program criteria are being met. FRA may conduct monitoring activities through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The recipient is responsible for monitoring award activities, including sub-awards and sub-grantees, to provide reasonable assurance that the award is being administered in compliance with Federal requirements. Financial monitoring responsibilities include the accounting of recipients and expenditures, cash management, maintaining of adequate financial records, and refunding expenditures disallowed by audits.

Appendix 2.4 Closeout Process

Project closeout occurs when all required project work and all administrative procedures described in 49 CFR section 262.19, as applicable, have been completed, and when FRA notifies the grant recipient and forwards the final Federal assistance payment, or when FRA acknowledges the grant recipient's remittance of the proper refund. Project closeout should not invalidate any continuing obligations imposed on the Grantee by an award or by the FRA's final notification or acknowledgment. Within 90 days of the Project completion date or termination by FRA, grantees agree to submit a final Federal Financial Report (SF–425), a certification or summary of project expenses, a final report, and third party audit reports, as applicable.

Appendix 3: Additional Information on Applicant Budgets

The information contained in this appendix is intended to assist applicants with developing the SOW budget and OMB Standard Forms 424A: Budget Information—Non-Construction Programs and 424C: Budget Information—Construction Programs, as described in Section 4.2.

Appendix 3.1 Non-Construction Project Budgets

Applicants must present a detailed budget for the proposed project that includes both Federal funds and matching funds. Items of cost included in the budget must be reasonable, allocable, and necessary for the project. At a minimum, the budget should separate total cost of the project into the following categories and provide a basis of computation for each cost:

• Personnel: List each position by title and name of employee, if available, and show the annual salary rate and the percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization.

• Fringe Benefits: Fringe benefits should be based on actual known costs or an established formula. Fringe benefits are for personnel listed in the ''Personnel'' budget category and only for the percentage of time devoted to the project.

• Travel: Itemize travel expenses of project personnel by purpose (training, interviews, and meetings). Show the basis of computation (*e.g.,* X people to Y-day training at $A airfare, $B lodging, $C subsistence).

• Equipment: List non-expendable items that are to be purchased. Nonexpendable equipment is tangible property having a

useful life of more than two years and an acquisition cost of $5,000 or more per unit. (**Note:** Organization's own capitalization policy may be used for items costing less than $5,000.) Expendable items should be included either in the ''Supplies'' category or in the ''Other'' category. Applicants should analyze the cost benefits of purchasing versus leasing equipment, especially high cost items and those subject to rapid technical advances. Rented or leased equipment should be listed in the ''Contractual'' category. Explain how the equipment is necessary for the success of the project. Attach a narrative describing the procurement method to be used.

• Supplies: List items by type (office supplies, postage, training materials, copying paper, and expendable equipment items costing less than $5,000) and show the basis for computation. (Note: Organization's own capitalization policy may be used for items costing less than $5,000). Generally, supplies include any materials that are expendable or consumed during the course of the project.

• Consultants/Contracts: Indicate whether applicant's written procurement policy (see 49 CFR 18.36) or the Federal Acquisition Regulations (FAR) are followed. *Consultant Fees:* For each consultant enter the name, if known, service to be provided, hourly or daily fee (8-hour day), and the estimated time on the project. *Consultant Expenses:* List all expenses to be paid from the grant to the individual consultants in addition to their fees (travel, meals, and lodging). *Contracts:* Provide a description of the product or service to be procured by contract and an estimate of the cost. Applicants are encouraged to promote free and open competition in awarding contracts. A separate justification must be provided for sole source contracts in excess of $100,000.

• Other: List items (rent, reproduction, telephone, janitorial or security services) by major type and the basis of the computation. For example, provide the square footage and the cost per square foot for rent, or provide the monthly rental cost and how many months to rent.

• Indirect Costs: Indirect costs are allowed only if the applicant has a Federally-approved indirect cost rate. A copy of the rate approval (a fully executed, negotiated agreement) must be attached. If the applicant does not have an approved rate, one can be requested by contacting the applicant's cognizant Federal agency, which will review all documentation and approve a rate for the applicant organization.

Appendix 3.2 Construction Project Budgets

Applicants must present a detailed budget for the proposed project that includes both Federal funds and matching funds. Items of cost included in the budget must be reasonable, allocable, and necessary for the project. At a minimum, the budget should separate total cost of the project into the following categories and provide a basis of computation for each cost:

• Administrative and Legal Expenses: List the estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchases of land which is allowable for Federal participation and certain services in support of construction of the project. This may include:

○ Hours/Rate and total cost of local government staff.

○ Hours/Rate and total cost of outside counsel fees.

○ Hours/Rate and total cost of consultants.

• Land, structures, rights-of-way, appraisals, and related items: List the estimate site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements). If possible, include details of number of acres, acre cost, square-footage, and square footage cost.

• Relocation expenses and payments: List the estimated costs relation to relocation advisory assistance, replacement of housing, relocation payments to displaces persons and businesses, *etc.* This may include:

o The gross salaries and wages of employees for the grantee who will be directly engaged in performing demolition or removal of structures from developed land.

• Architectural and engineering fees: List the estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

• Other architectural and engineering fees: List the estimated engineering costs, such as surveys, tests, soil borings, *etc.*

• Project inspection fees: List the estimated engineering inspection costs. This may include:

○ Rate of project inspector.

○ Construction monitoring.

○ Audit or construction programs.

• Site Work: List the estimated costs of site preparation and restoration which are not included in the basic construction contract. This may include:

○ Clearing.

○ Erosion control.

○ Reseeding.

• Demolition and removal: List the estimated costs related to demolition activities.

• Construction: List the estimated cost of the construction contract. This may include costs for:

○ Labor costs, *e.g.,* associated with site preparation and installation of grade crossings, highway warning signs, *etc.*

○ Equipment rental/purchase, *e.g.,* an excavator or bulldozer

○ Materials, *e.g.,* Rail anchors, retaining walls, *etc.*

• Equipment: List the estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

• Miscellaneous: List the estimated miscellaneous costs.

• Contingencies: List the estimated contingency costs.

Issued in Washington, DC, on September 14, 2011.

Joseph C. Szabo,

Administrator.

[FR Doc. 2011–24125 Filed 9–19–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2011–0129]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed 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 the 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 reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before November 21, 2011.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2011–0129 using any of the following methods:

Electronic submissions: 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, 1200 New Jersey Ave., SE., Room W12–140, Washington, DC, 20590.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without changes to *http://www.regulations.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Eric Traube, Contracting Officer's Technical Representative, Office of Human-Vehicle Performance Research (NVS–331), National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., Washington, DC 20590. Mr. Traube's phone number is 202–366–5597. His e-mail address is *etraube@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995,

before an agency submits a proposed collection of information to OMB for approval, it must 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 regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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 submissions of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

National Survey of Driver Attitudes and Opinions of Advanced In-Vehicle Alcohol Detection Systems

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—NHTSA Form 1157.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—NHTSA proposes to collect information from the public to assess attitudes and opinions of innovative vehicle-based technology for detecting drivers whose blood alcohol level exceeds the limit. A national telephone survey will be administered to 1,000 randomly selected drivers, age 21 and older, drawn from all 50 states and the District of Columbia. The national survey will be preceded by a pretest administered to 25 respondents. Participation by respondents will be voluntary. Survey topics will include public perceptions of advanced in-vehicle alcohol detection technologies currently being developed, and preferences and concerns regarding technology design and potential installation in vehicles. Interviews will average 15 minutes.

In conducting the proposed survey, the interviewers will use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. Interviews will be conducted with respondents using landline phones and with respondents using cell phones. The proposed survey will be anonymous; the survey will not collect any personal information that would allow anyone to identify respondents.

Description of the Need for the Information and Proposed Use of the Information—The National Highway Traffic Safety Administration's (NHTSA) mission is to save lives, prevent injuries, and reduce healthcare and other economic costs associated with motor vehicle crashes. In 2009, 10,839 people were killed in alcohol-impaired-driving crashes. Drivers are considered to be alcohol-impaired when their blood alcohol concentration (BAC) is .08 grams per deciliter (g/dL) or higher. These alcohol-impaired-driving fatalities accounted for 32 percent of the total motor vehicle traffic fatalities in the United States.

In a continuing effort to reduce the adverse consequences of alcohol-impaired driving, NHTSA in conjunction with the Automotive Coalition for Traffic Safety (ACTS) is undertaking research and development to explore the feasibility of, and public policy challenges associated with, use of in-vehicle alcohol detection technology. The agency believes that use of vehicle-based, alcohol detection technologies could help to significantly reduce the number of alcohol-impaired driving crashes, deaths and injuries by preventing drivers from driving while their blood alcohol concentration (BAC) is at or above the legal limit. Alcohol detection technologies suitable for installation in new vehicles must be able to measure BAC in a no-intrusive manner: that is, they must be seamless with the driving task, be highly accurate, fast, reliable, durable, and require little or no maintenance. In 2008, ACTS and NHTSA entered into a 5-Year Cooperative Agreement to ''*explore the feasibility, the potential benefits of, and the public policy challenges associated with a more widespread use of unobtrusive technology to prevent drunk driving''.* The goal of the Driver Alcohol Detection System for Safety (DADSS) project is, through a step-by-step, data-driven process, to develop and test prototypes that may be considered for vehicle integration thereafter. Two technologies are being investigated; a touch-based approach allowing assessment of alcohol in human tissue and a breath-based approach allowing assessment of alcohol concentration in the driver's exhaled breath.

As technology development progresses and decisions are being made about best practices for integrating such technology into vehicles, NHTSA is soliciting public opinions about the proposed in-vehicle alcohol detection devices. Optimization of technology and public acceptance of it once deployed will depend on the extent to which public attitudes are taken into account during the development process. Thus NHTSA seeks input from drivers to:

- Gauge public perceptions of advanced in-vehicle alcohol detection technology;
- Guide the technology design; and
- Guide a strategy for introduction of this technology.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Under this proposed effort, the Contractor will conduct 25 pretest telephone interviews and 1,000 national survey telephone interviews for a total of 1025 interviews. Interviews will be 15 minutes in length. The respondent sample will be selected from all 50 States and the District of Columbia. Interviews will be conducted with randomly selected persons with residential phones or cell phones. Businesses are ineligible for the sample and will not be interviewed. No more than one respondent will be selected per household. Each member of the sample will complete one interview.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information—NHTSA estimates that respondents will spend an average of 15 minutes each to complete the survey, for a total of 256 hours 15 minutes for the 25 pretest respondents and 1000 survey respondents. All interviewing will occur during a two-month period during 2012. Thus the annual reporting burden would be the entire 256 hours and 15 minutes. The respondents will not incur any reporting cost from the information collection. The respondents also will not incur any recordkeeping burden or recordkeeping cost from the information collection.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

John Maddox,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2011–24038 Filed 9–19–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0064; Notice 2]

Bentley Motors Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Decision of Inconsequential Noncompliance.

SUMMARY: Bentley Motors Inc. (BMI),[1] has determined that an unknown number of replacement seat belts that it imported do not include the installation and usage instructions required by paragraphs S4.1(k) and S4.1(l) of Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies.* BMI filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Responsibility and Reports'' on December 18, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, BMI has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on June 23, 2010 in the **Federal Register** (75 FR 35877). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0064.''

For further information on this decision, contact Ms. Claudia Covell, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5293, facsimile (202) 366–7002.

BMI explained that approximately 300 nonconforming seat belt assemblies, produced during the 12 months prior to December 18, 2009, and an additional unknown number produced prior to that by its manufacturer, Bentley Motors, Ltd, which is based in the United Kingdom, were imported by BMI and sold to its authorized dealers in the United States for replacement purposes.

BMI described the noncompliance as the failure to provide both installation and use instructions with the seat belt assemblies as required in FMVSS No. 209 S4.1(k) and S4.1(l).

BMI noted that the noncompliant seat belts can be identified by part number for specific vehicle applications and are labeled by model number, name of manufacturer, and date of production in accordance with paragraph S4.1(j) of FMVSS No. 209.

BMI provided the basis of why they believe this noncompliance is inconsequential to motor vehicle safety. In essence, the BMI stated that:

- Seat belts currently sold by BMI to its dealers are only for installation as replacement [seat] belts in specific seating positions in Bentley vehicles and are identified by part number in the parts catalogue for use in specific vehicle models and seat positions. This method of identification and the physical differences between belt retractors and attachment hardware as well as the vehicle installation environment preclude the misinstallation of seat belt assemblies.
- Seat belt assembly installation instructions are included in Bentley Service Manuals available to all Bentley Independent repair shops and individual owners can also purchase the Service Manual or seek dealer assistance and obtain copies of the instructions, if necessary. In most cases, reference to the installation instructions will not be necessary because the seat belt installation will be to replace an existing belt and the installation procedure will just be the reverse of the removal procedure.
- Seat belt use instructions regarding proper seat belt positioning on the body and proper maintenance and periodic inspection for damage are, and have been included, in all Bentley owners' manuals.
- BMI has developed installation and use instructions for replacement seat belt assemblies. This material is being placed into the packages of seat belts currently in BMI's service parts warehouses. The required material will also be included with all seat belt assemblies shipped to BMI for resale to dealers in the future.
- BMI is not aware of owner complaints or field incident reports relating to the lack of installation and use instructions with replacement seat belt assemblies.

In view of the above, BMI believes that the described noncompliance is inconsequential and does not present a risk to motor vehicle safety. Thus, BMI requests that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA Decision: To help ensure proper selection, installation, usage, and maintenance of seat belt assemblies, paragraph S4.1(k) of FMVSS No. 209 requires that installation, usage, and maintenance instructions be provided with seat belt assemblies, other than those installed by an automobile manufacturer.

First, we note that the subject seat belt assemblies are only made available to BMI authorized dealerships for their use or subsequent resale. Because the parts ordering process used by BMI authorized dealerships clearly identifies the correct service part required by model year, model, and seating position, NHTSA believes that there is little likelihood that an inappropriate seat belt assembly will be provided for a specific seating position within a BMI vehicle.

Second, we note that technicians at BMI dealerships have access to the seat belt assembly installation instruction information in BMI Shop Manuals. In addition, installers other than BMI dealership technicians can access the installation instructions from BMI service manuals, BMI dealers or from aftermarket service information compilers. We also believe that BMI is correct in stating that the seat belt assemblies are designed to be installed properly only in their intended application. Thus, we conclude that sufficient safeguards are in place to prevent the installation of an improper seat belt assembly.

NHTSA recognizes the importance of having installation instructions available to installers as well as use and maintenance instructions available to consumers. The risk created by this noncompliance is that someone who purchased an assembly is unable to obtain the necessary installation information resulting in an incorrectly installed seat belt assembly. However, because the seat belt assemblies are designed to be installed properly only in their intended application and the installation information is widely available to the public, it appears that there is little likelihood that installers will not be able to access the installation instructions. Furthermore, we note that BMI has stated that they are not aware of any customer field reports of service seat belt assemblies being incorrectly installed in the subject applications, nor aware of any reports requesting installation instructions. These findings suggest that it is unlikely that seat belts have been improperly installed.

In addition, although 49 CFR 571.209 paragraph S4.1(k) requires certain

[1] Bentley Motors Inc. is a Delaware Corporation that imports motor vehicles and replacement equipment.

instructions specified in SAE Recommended Practice J800c be included in seat belt replacement instructions, that requirement applies to seat belts intended to be installed in seating positions where seat belts do not already exist. The subject seat belt assemblies are only intended to be used for replacement of original equipment seat belts; therefore, the instructions do not apply to the subject seat belt assemblies.[2]

With respect to seat belt usage and inspection instructions, we note that this information is available in the Owner Handbooks that are included with each new vehicle and apply to the replacement seat belt assemblies installed in these vehicles. Thus, with respect to usage and maintenance instructions, it appears that BMI has met the intent of S4.1(l) of FMVSS No. 209 for the subject vehicles using alternate methods for notification.

NHTSA has granted similar petitions for noncompliance with seat belt assembly installation and usage instruction standards. Refer to Hyundai Motor Company (74 FR 9125, March 2, 209); Ford Motor Company (73 FR 11462, March 3, 2008); Mazda North America Operations (73 FR 11464, March 3, 2008); Ford Motor Company (73 FR 63051, October 22, 2008); Subaru of America, Inc. (65 FR 67471, November 9, 2000); Bombardier Motor Corporation of America, Inc. (65 FR 60238, October 10, 2000); TRW, Inc. (58 FR 7171, February 4, 1993); and Chrysler Corporation, (57 FR 45865, October 5, 1992). In all of these cases, the petitioners demonstrated that the noncompliant seat belt assemblies were properly installed, and due to their respective replacement parts ordering systems, improper replacement seat belt assembly selection and installation would not be likely to occur.

In consideration of the foregoing, NHTSA has decided that BMI has met its burden of persuasion that the seatbelt installation and usage instruction noncompliances described are inconsequential to motor vehicle safety. Accordingly, BMI's application is granted, and it is exempted from providing the notification of noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the replacement seat belt assemblies[3] that BMI no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: September 14, 2011.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2011–24126 Filed 9–19–11; 8:45 am]

BILLING CODE 4910–59–P

[2] *Subaru of America, Inc.; Grant of Application for Decision of Inconsequential Non-Compliance* (65 FR 67472)

[3] BMI's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt BMI as a manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the affected replacement seat belt assemblies. However, the agency cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant replacement seat belt assemblies under their control after BMI notified them that the subject noncompliance existed.

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Part II

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode); Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2010–BT–TP–0039]

RIN 1904–AC27

Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode)

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: Where appropriate, the U.S. Department of Energy (DOE) has proposed to amend its test procedures for residential dishwashers, dehumidifiers, and conventional cooking products (which includes cooktops, ovens, and ranges) to include provisions for measuring standby mode and off mode energy consumption, as required by the Energy Independence and Security Act of 2007 (EISA 2007). These test procedure amendments would incorporate by reference certain provisions of the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power.'' Since publication of DOE's initial proposal in December 2010, the IEC has replaced the First Edition of this standard with the current Second Edition. This supplemental notice of proposed rulemaking proposes to incorporate the latest edition of IEC Standard 62301.

DATES: DOE will accept comments, data, and information regarding this supplemental notice of proposed rulemaking (SNOPR) submitted no later than October 20, 2011. See section 0, ''Public Participation,'' for details.

ADDRESSES: Any comments submitted must identify the SNOPR for Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products, and provide docket number EERE–2010–BT–TP–0039 and/or Regulatory Information Number (RIN) 1904–AC27. Comments may be submitted using any of the following methods:

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

2. *E-mail: Res-DW-Dehumid-CookingProd-2010-TP-0039@ee.doe.gov.* Include docket number EERE–2010–BT–TP-0039 and/or RIN 1904–AC27 in the subject line of the message.

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

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

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

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

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;rpp=10;po=0;D=EERE-2010-BT-TP-0039.* This web page contains a link to the docket for this notice on the *http://www.regulations.gov* site. The *http://www.regulations.gov* web page contains simple instructions on how to access all documents, including public comments, in the docket. See section 0 for information on how to submit comments through *http://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT:

Mr. Wesley Anderson, Jr., U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7335. E-mail: *Wes.Anderson@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances.[2] These include residential dishwashers, conventional cooking products,[3] and dehumidifiers, the subject of today's notice. (42 U.S.C. 6292(a)(6) and (10); 6295(cc))

Under the Act, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) establishing Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use: (1) As the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA, and (2) for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether the products comply with these energy conservation standards. (42 U.S.C. 6295(s))

A. General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine ''to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all residential covered products to include measures of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The statute requires integration of such energy consumption ''into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—

(i) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or

(ii) Such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible.'' (42 U.S.C. 6295(gg)(2)(A))

Under the statutory provisions adopted by EISA 2007, any such amendment must consider the most current versions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' and IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment.''[4] *Id.* At the time of the enactment of EISA 2007, the most current versions of these standards were IEC Standard 62301 (First Edition 2005–06) and IEC Standard 62087 (Second Edition 2008–09).

1. Dishwashers

DOE's test procedure for dishwashers is found in the Code of Federal Regulations (CFR) at 10 CFR part 430, subpart B, appendix C. DOE originally established its test procedure for dishwashers in 1977. 42 FR 39964 (August 8, 1977). Since that time, the dishwasher test procedure has undergone a number of amendments, as discussed below. In 1983, DOE amended the test procedure to revise the representative average-use cycles to more accurately reflect consumer use and to address dishwashers that use 120 °F inlet water. 48 FR 9202 (March 3, 1983). DOE amended the test procedure again in 1984 to redefine the term ''water heating dishwasher.'' 49 FR 46533 (Nov. 27, 1984). In 1987, DOE amended the test procedure to address models that use 50 °F inlet water. 52 FR 47549 (Dec. 15, 1987). In 2001, DOE revised the test procedure's testing specifications to improve testing repeatability, changed the definitions of ''compact dishwasher'' and ''standard dishwasher,'' and reduced the average number of use cycles per year from 322 to 264. 66 FR 65091, 65095–97 (Dec. 18, 2001). In 2003, DOE again revised the test procedure to more accurately measure dishwasher efficiency, energy use, and water use. The 2003 dishwasher test procedure amendments included the following revisions: (1) the addition of a method to rate the efficiency of soil-sensing products; (2) the addition of a method to measure standby power; and (3) A reduction in the average-use cycles per year from 264 to 215. 68 FR 51887, 51899–903 (August 29, 2003). The current version of the test procedure includes provisions for determining estimated annual energy use (EAEU), estimated annual operating cost (EAOC), energy factor (EF) expressed in cycles per kilowatt-hour (kWh), and water consumption expressed in gallons per cycle. 10 CFR 430.23(c).

2. Dehumidifiers

The DOE test procedure for dehumidifiers is found at 10 CFR 430, subpart B, appendix X. The Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA to specify that the U.S. Environmental Protection Agency's (EPA) test criteria used under the ENERGY STAR® [5] program must serve as the basis for the test procedure for dehumidifiers. (EPACT 2005, section 135(b); 42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria require that American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DH–1–2003,

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

[3] The term ''conventional cooking products,'' as used in this notice, refers to residential electric and gas kitchen ovens, ranges, and cooktops (other than microwave ovens).

[4] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedures to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. Accordingly, the narrow scope of this particular IEC standard reduces its relevance to today's proposal.

[5] For more information on the ENERGY STAR program, see: *http://www.energystar.gov.*

''Dehumidifiers,'' be used to measure energy use and that the Canadian Standards Association (CAN/CSA) standard CAN/CSA–C749–1994 (R2005), ''Performance of Dehumidifiers,'' be used to calculate EF. DOE has adopted these test criteria, along with related definitions and tolerances, as its test procedure for dehumidifiers. 71 FR 71340, 71347, 71366–68 (Dec. 8, 2006). The DOE test procedure provides methods for determining the EF for dehumidifiers, which is expressed in liters (l) of water condensed per kWh.

3. Conventional Cooking Products

DOE's test procedures for conventional ranges, cooktops, and ovens (including microwave ovens) are found at 10 CFR 430, subpart B, appendix I. DOE first established the test procedures included in appendix I in a final rule published in the *Federal Register* on May 10, 1978. 43 FR 20108, 20120–28. DOE revised its test procedure for cooking products to more accurately measure their efficiency and energy use, and published the revisions as a final rule in 1997. 62 FR 51976 (Oct. 3, 1997). These test procedure amendments included: (1) a reduction in the annual useful cooking energy; (2) a reduction in the number of self-cleaning oven cycles per year; and (3) incorporation of portions of IEC Standard 705–1988, ''Methods for measuring the performance of microwave ovens for household and similar purposes,'' and Amendment 2–1993 for the testing of microwave ovens. *Id.* The test procedure for conventional cooking products establishes provisions for determining EAOC, cooking efficiency (defined as the ratio of cooking energy output to cooking energy input), and EF (defined as the ratio of annual useful cooking energy output to total annual energy input). 10 CFR 430.23(i); 10 CFR 430 subpart B, appendix I. These provisions for conventional cooking products are not currently used for compliance with any energy conservation standards (because those standards currently involve design requirements), nor is there an EnergyGuide [6] labeling program for cooking products.

DOE has initiated a separate test procedure rulemaking to address standby mode and off mode power consumption for microwave ovens. This rulemaking was initiated separately in response to comments from interested parties on the advance notice of proposed rulemaking (ANOPR) for an earlier rulemaking concerning energy conservation standards for residential dishwashers, dehumidifiers, cooking products, and commercial clothes washers published on November 15, 2007 (hereafter referred to as the November 2007 ANOPR) (72 FR 64432), prior to the enactment of EISA 2007. As discussed in the subsequent notice of proposed rulemaking (NOPR) for that standards rulemaking, interested parties stated generally that DOE should amend the test procedures for all types of cooking products to allow for measurement of standby mode energy use in order to implement a standby power energy conservation standard. 73 FR 62034, 62043–44 (Oct. 17, 2008). However, DOE did not receive any specific data or inputs on standby power consumption in conventional cooking products. Also, at that time, interested parties did not submit any comments regarding DOE addressing new measures of standby mode and off mode energy use in the test procedures or energy conservation standards for the other products that were the subject of the November 2007 ANOPR (*i.e.,* dishwashers and dehumidifiers). Because DOE agreed with the comments supporting new measures of standby mode and off mode energy use for microwave ovens and the potential for early adoption of an energy conservation standard for microwave ovens addressing standby mode and off mode energy consumption, DOE published a NOPR proposing amendments to just the microwave oven test procedure for standby mode and off mode in the **Federal Register** on October 17, 2008. 73 FR 62134. DOE subsequently published a supplemental notice of proposed rulemaking (SNOPR) in the **Federal Register** on this topic on July 22, 2010 (75 FR 42612), and an interim final rule on March 9, 2011 (hereafter referred to as the March 2011 Interim Final Rule) (76 FR 12825). DOE issued this as an interim final rule in order to allow comment on a newly issued version of IEC Standard 62301 (which is discussed in more detail in the following section) for measuring standby mode and off mode energy use, the previous version of which was incorporated by reference in the microwave oven test procedure. Consequently, DOE is proposing amendments to its cooking products test procedure for only conventional cooking products in today's SNOPR.

B. Standby Mode and Off Mode

Section 310 of EISA 2007 amended EPCA to require DOE to amend the test procedures for covered products to address standby mode and off mode energy consumption. Specifically, the amendments require DOE to integrate standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for that product unless the current test procedures already fully account for such consumption. If integration is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' and IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment.'' *Id.*

C. The December 2010 NOPR

On December 2, 2010, DOE published a NOPR (hereafter called the December 2010 NOPR) in which it proposed to incorporate by reference into the test procedures for dishwashers, dehumidifiers, and conventional cooking products specific provisions from IEC Standard 62301 ''Household electrical appliances—Measurement of standby power,'' First Edition 2005–06 (IEC Standard 62301 (First Edition) or ''First Edition'') regarding test conditions and test procedures for measuring standby mode and off mode power consumption. 75 FR 75290, 75295–97. DOE also proposed to incorporate into each test procedure the definitions of ''active mode,'' ''standby mode,'' and ''off mode'' that were based on the definitions for those terms provided in the most current draft at that time of an updated version of IEC Standard 62301. *Id.* at 75297–300. Further, DOE proposed to include in each test procedure additional language that would clarify the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power consumption.[7] *Id.* at 75300–04. DOE held a public meeting on December 17, 2010, to receive comments on the December 2010 NOPR, and accepted written comments, data, and information until February 15, 2011. Commenters to the December 2010 NOPR suggested that the draft

[6] For more information on the EnergyGuide labeling program, see: *http://www.access.gpo.gov/nara/cfr/waisidx_00/16cfr305_00.html.*

[7] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedure to include standby mode and off mode energy consumption. See 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. The narrow scope of this particular IEC standard reduces its relevance to today's proposal.

updated version of IEC Standard 62301 would provide practical improvement to the mode definitions and testing methodology for the test procedures that are the subject of this rulemaking.

II. Summary of the Supplemental Notice of Proposed Rulemaking

Based upon the public comment received on the December 2010 NOPR, DOE decided to further analyze the draft materials associated with IEC Standard 62301 (Second Edition), which were in an advanced stage of development. Shortly thereafter, the IEC adopted and published IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01 (IEC Standard 62301 (Second Edition) or ''Second Edition'') on January 27, 2011. Consistent with its statutory mandate, DOE has reviewed this latest version of the IEC standard and agrees that it does provide for improvement for some measurements of standby mode and off mode energy use. Accordingly, DOE proposes in today's SNOPR to incorporate certain provisions of the IEC Standard 62301 (Second Edition), along with clarifying language, into the DOE test procedures for residential dishwashers, dehumidifiers, and conventional cooking products. Other than the specific amendments newly proposed in today's SNOPR, DOE continues to propose the test procedure amendments originally included in the December 2010 NOPR. For the reader's convenience, DOE has reproduced in this SNOPR the entire body of proposed regulatory text from the December 2010 NOPR for the residential dishwasher, dehumidifier, and conventional cooking products test procedures, further amended as appropriate according to today's proposals. DOE's supporting analysis and discussion for the portions of the proposed regulatory text not affected by this SNOPR may be found in the December 2010 NOPR. 75 FR 75290 (Dec. 2, 2010).

III. Discussion

A. Incorporation of IEC Standard 62301 (Second Edition)

As noted above, EPCA, as amended by EISA 2007, requires that test procedures be amended to include standby mode and off mode energy consumption, taking into consideration the most current versions of IEC Standards 62301 and 62087. (42 U.S.C. 6295(gg)(2)(A)) The December 2010 NOPR proposed to incorporate in the test procedures for dishwashers, dehumidifiers, and conventional cooking products relevant provisions from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power. The amended test procedures would use these measured wattages in calculations to accomplish the incorporation of standby mode and off mode energy consumption into the test procedures. DOE reviewed the IEC Standard 62301 (First Edition) and tentatively concluded that it would be generally applicable to dishwashers, dehumidifiers, and conventional cooking products, although some clarification would be needed. Specifically, DOE proposed in the December 2010 NOPR for standby mode and off mode power measurements to provide a stabilization period of at least 30 minutes followed by an energy use measurement period of not less than 10 minutes for each of the covered products. 75 FR 75290, 75300 (Dec. 2, 2010). Additionally, for conventional cooking products, DOE proposed a specific standby mode power measurement methodology for units in which power varies as a function of displayed time. 75 FR 75290, 75302–04 (Dec. 2, 2010). With these clarifications in place, the December 2010 NOPR proposed to reference IEC Standard 62301 (First Edition) for the standby mode and off mode wattage measurements. (DOE notes that IEC Standard 62301 (First Edition) has been incorporated by reference in 10 CFR 430.3, ''Materials incorporated by reference,'' as part of recent final amendments to the furnace and boiler test procedure. 75 FR 64621 (Oct. 20, 2010).)

DOE noted in the December 2010 NOPR that there were expected to be significant differences between the first and second editions of IEC Standard 62301, based upon DOE's review of the Final Draft International Standard (FDIS) version available at that time. 75 FR 75290, 75296 (Dec. 2, 2010). For example, IEC Standard 62301 (FDIS) modified certain provisions, such as clarifying the definition of ''standby mode'' and ''off mode'' to allow for the measurement of multiple standby power modes.

As part of the December 2010 NOPR, DOE reviewed IEC Standard 62301 (FDIS) and anticipated that, once finalized, it would ultimately define the various modes differently than IEC Standard 62301 (First Edition). 75 FR 75290, 75296–97 (Dec. 2, 2010). IEC Standard 62301 (FDIS) incorporated responses to comments from multiple national committees from member countries on several previous draft versions, and thus, DOE believed, it provided the best available mode definitions. Although the revised IEC Standard 62301 (Second Edition) had not yet been officially released, DOE decided to consider the substance of the new operational mode definitions from the draft version IEC Standard 62301 (FDIS) for the December 2010 NOPR. *Id.* DOE noted that the mode definitions in IEC Standard 62301 (FDIS) were substantively similar to those in the previous draft version (IEC Standard 62301 Committee Draft for Vote (CDV)), which were the subject of extensive comments from interested parties during recent DOE test procedure rulemakings addressing standby mode and off mode energy use in other products (*i.e.,* microwave ovens, clothes dryers, and room air conditioners). In those instances, interested parties indicated general support for adopting the mode definitions provided in IEC Standard 62301 (CDV). Due to the effective equivalence of the mode definitions in IEC Standard 62301 (CDV) and IEC Standard 62301 (FDIS), DOE stated in the December 2010 NOPR that the public comment support expressed for the mode definitions in IEC Standard 62301 (CDV) would extend to those in IEC Standard 62301 (FDIS). 75 FR 75290, 75297 (Dec. 2, 2010).

After considering both versions of IEC Standard 62301 (*i.e.,* First Edition and FDIS), DOE tentatively concluded in the December 2010 NOPR that the definitions of ''standby mode,'' ''off mode,'' and ''active mode'' provided in IEC Standard 62301 (FDIS) were the most useful, in that they expanded upon the EPCA mode definitions and provided additional guidance as to which functions would be associated with each mode. Therefore, DOE proposed definitions of ''standby mode,'' ''off mode,'' and ''active mode'' based on the definitions provided in IEC Standard 62301 (FDIS) in the December 2010 NOPR. *Id.*

DOE noted in the December 2010 NOPR that other significant changes in the methodology of IEC Standard 62301 were first introduced only at the FDIS stage. DOE noted that those changes had not been, at that time, the subject of significant public comment from interested parties, nor had DOE had the opportunity to conduct a thorough analysis of those provisions. 75 FR 75290, 75297 (Dec. 2, 2010). Consequently, the merits of those latest changes had not been fully vetted, as would demonstrate that they would be preferable to the methodological provisions in IEC Standard 62301 (First Edition). Thus, DOE stated it was not able to determine whether the updated methodology represented the best available means to measure standby mode and off mode energy use. DOE,

therefore, tentatively decided to base the proposed test procedure amendments (other than mode definitions) on the provisions of IEC Standard 62301 (First Edition). *Id.* (DOE notes that while the statute requires consideration of the latest version of IEC 62301, it does not require the agency to ignore other draft versions that have achieved an advanced level of vetting, such as IEC Standard 62301 (FDIS), which had already been out for a final vote among members.)

In response to the December 2010 NOPR, DOE received comments from interested parties regarding the appropriate version of IEC Standard 62301 to use in its test procedures to measure standby mode and off mode energy use. Comments made at the public meeting were predicated upon IEC Standard 62301 (FDIS) being the most current, albeit draft, version of the updated standard. By the time the NOPR comment period ended on February 15, 2011, IEC Standard 62301 (Second Edition) had published, and thus, interested parties were able to consider this version as the most current in their written submissions to DOE.

Pacific Gas and Electric Company (PG&E), Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (jointly ''the California Utilities'') supported harmonizing with the mode definitions in IEC Standard 62301 (FDIS). (California Utilities, No. 16 at p. 3; PG&E, No. 17 at p. 3) [8] The Association of Home Appliance Manufacturers (AHAM), Northwest Energy Efficiency Alliance (NEEA), and Whirlpool Corporation (Whirlpool) supported basing the methodology as well as mode definitions on the FDIS or Second Edition of IEC Standard 62301. (AHAM, Public Meeting Transcript, No. 10 at pp. 27–30, 36 [9]; NEEA, No. 11 at pp. 1–2, 5–6; Whirlpool, No. 12 at pp. 1–2) AHAM and Whirlpool supported the use of IEC Standard 62301 (Second Edition) for reasons of: (1) international harmonization; (2) clarity and consistency in testing; and (3) reduced manufacturer test burden. (Whirlpool, No. 12 at pp. 1–2, AHAM, No. 14 at p. 3)

AHAM noted that IEC Standard 62301 (FDIS), and subsequently IEC Standard 62301 (Second Edition), contain a number of important clarifications that were not present in IEC Standard 62301 (First Edition) or IEC Standard 62301 (CDV) and that would provide more accurate testing and measurement. Specifically, AHAM identified new or expanded sections on the measurement of power uncertainty, crest factor, power measurement frequency response, sampling methods, average reading methods for non-cyclic loads, and instrument measurement methods. AHAM opined that these provisions become critical in light of DOE's announced intent to require third-party testing and verification testing of very small amounts of energy in standby mode. AHAM also commented that it would be difficult to pick and choose specific sections to adopt, because IEC Standard 62301 is intended to be read as a whole and that picking certain sections out may cause problems in how they are interpreted. For example, AHAM argued that picking out a definition from IEC Standard 62301 (FDIS) and then combining that with incorporation by reference to IEC Standard 62301 (First Edition) would be inconsistent. (AHAM, No. 14 at p. 3; AHAM, Public Meeting Transcript, No. 10 at pp. 27–30)

NEEA stated that DOE has the regulatory flexibility to adjust mode definitions and test methods if it believes that a definition or procedure other than that in IEC Standard 62301 would be more appropriate. On this point, NEEA argued that IEC Standard 62301 (First Edition) is inadequate for comprehensively capturing the energy use of the broad array of products and modes that DOE is trying to cover. NEEA commented that IEC Standard 62301 (FDIS) is particularly suitable for operational modes that have cyclic or unstable power consumption. NEEA commented that any measurement period that is 5 minutes or less, as allowed in IEC Standard 62301 (First Edition), is likely to be insufficient for capturing the energy use for these modes. However, NEEA also stated there could be certain specific modes for which the less complicated procedures from IEC Standard 62301 (First Edition) might be more suitable, specifically, if DOE includes cycle-finished mode as part of active mode rather than inactive (standby) mode.[10] (NEEA, No. 11 at pp. 1–2, 5–6)

Because IEC Standard 62301 (Second Edition) was issued on January 27, 2011, it became the most current version under the EPCA requirements at the time DOE considered comments on the December 2010 NOPR. Accordingly, DOE then conducted a comparative review of the FDIS and Second Edition versions of IEC Standard 62301, and the results of this review demonstrated that the provisions of the Second Edition are identical in substance to those of the FDIS version. Therefore, DOE interprets comments on IEC Standard 62301 (FDIS) to be equally applicable to IEC Standard 62301 (Second Edition).

DOE agrees with the commenters that IEC Standard 62301 (Second Edition) is an internationally-accepted test procedure for measuring standby power in residential appliances, and that this version provides clarification to certain sections as compared to the First Edition. Specifically, section 4, paragraph 4.4 of the Second Edition revises the power measurement accuracy provisions that were present in the First Edition. A more comprehensive specification of required accuracy is provided in the Second Edition, which depends upon the characteristics of the power being measured. Testers using the Second Edition are required to measure the crest factor and power factor of the input power, and to calculate a maximum current ratio (MCR). The Second Edition then specifies calculations to determine permitted uncertainty in MCR. DOE notes, however, that the allowable uncertainty is the same or less stringent than the allowable uncertainty specified in the First Edition, depending on the value of MCR and the power level being measured (see Table 0.1 for examples),

[8] A notation in the form ''PG&E, No. 17 at p. 3'' identifies a written comment: (1) Made by Pacific Gas and Electric Company; (2) recorded in document number 17 that is filed in the docket of the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking (Docket No. EERE–2010–BT–TP–0039) and available for review at *http://www.regulations.gov;* (3) which appears on page 3 of document number 17.

[9] A notation in the form ''AHAM, Public Meeting Transcript, No. 10 at pp. 27–30, 36'' identifies an oral comment that DOE received during the December 17, 2010, NOPR public meeting, was recorded in the public meeting transcript in the docket for the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking (Docket No. EERE–2010–BT–TP–0039), and is available for review at *http://www.regulations.gov.* This particular notation refers to a comment: (1) Made by the Association of Home Appliance Manufacturers during the public meeting; (2) recorded in document number 10, which is the public meeting transcript that is filed in the docket of the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking; and (3) which appears on pages 27–30 and 36 of document number 10.

[10] DOE proposed in the December 2010 NOPR to define ''active mode'' for dishwashers, dehumidifiers, and conventional cooking products as ''the condition in which the energy-using product is connected to a main power source, has been activated, and provides one or more main functions.'' DOE proposed to define ''inactive mode'' for dishwashers, dehumidifiers, and conventional cooking products as ''a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.'' DOE proposed to define ''cycle finished mode'' for dishwashers and conventional cooking products as ''a mode which provides continuous status display following operation in active mode.'' 75 FR 75290, 75297–9 (Dec. 2, 2010).

so that sufficient accuracy of measurements is achieved under a full range of possible measured power levels without placing undue demands on the instrumentation. In addition, the wattage variations associated with the allowable uncertainty in power measurements are so small in relation to overall energy use that they would not result in measurable changes in the overall efficiency metric for dishwashers, dehumidifiers, or conventional cooking products. These power measurement accuracy requirements were based upon detailed technical submissions to the IEC in the development of IEC Standard 62301 (FDIS), which showed that commonly-used power measurement instruments were unable to meet the original requirements for certain types of loads. Therefore, DOE believes that the incremental testing burden associated with the additional measurements and calculations is offset by the more reasonable requirements for testing equipment, while maintaining measurement accuracy deemed acceptable and practical by voting members for IEC Standard 62301 (Second Edition). For these reasons, DOE proposes in today's supplemental notice to incorporate by reference the power equipment specifications in section 4, paragraph 4.4 of IEC Standard 62301 (Second Edition).

TABLE III.1—COMPARISON OF ALLOWABLE UNCERTAINTY IN MEASURED POWER

Measured power *(W)*	Allowable uncertainty *(W)*		
	IEC 62301 (First edition)	IEC 62301 (Second edition)	
		MCR = 5	MCR = 15
5.0	0.1	0.1	0.14
2.0	0.04	0.04	0.056
1.0	0.02	0.02	0.028
0.5	0.01	0.02	0.02
0.2	0.01	0.02	0.02

Additionally, IEC Standard 62301 (Second Edition) adds certain clarifications to the installation and setup procedures in section 5, paragraph 5.2 of the First Edition regarding products equipped with battery recharging circuits, as well as instructions for testing each relevant configuration option identified in the product's instructions for use. DOE is not aware of any dishwashers, dehumidifiers, or conventional cooking products with a recharging circuit. DOE also believes that a requirement to separately test each configuration option could substantially increase test burden and potentially conflicts with the requirement within the same section to set up the product in accordance with the instructions for use or, if no such instructions are available, to use the factory or ''default'' settings. Therefore, DOE tentatively concludes that the portions of the installation instructions in section 5, paragraph 5.2 of IEC Standard 62301 (Second Edition) pertaining to batteries and the requirement for the determination, classification, and testing of all modes associated with every combination of available product configuration options (which may be more numerous than the modes associated with operation at the default settings) are not appropriate for the dishwasher, dehumidifier, and conventional cooking products test procedures. Accordingly, DOE is proposing qualifying language in the test procedure amendments for these products to disregard those portions of the installation instructions.

The other major changes in the Second Edition that relate to the measurement of standby mode and off mode power consumption in covered products involve the measurement techniques and specification of the stability criteria required to measure that power. The Second Edition contains more detailed techniques to evaluate the stability of the power consumption and to measure the power consumption for loads with different stability characteristics. According to the Second Edition, the user is given a choice of measurement procedures, including sampling methods, average reading methods, and a direct meter reading method. DOE evaluated these new methods in terms of test burden and improvement in results as compared to those methods proposed in the December 2010 NOPR, which were based on IEC Standard 62301 (First Edition).

In the December 2010 NOPR, DOE proposed for all covered products to require measurement of standby mode and off mode power using section 5, paragraph 5.3 of IEC Standard 62301 (First Edition), clarified by requiring the product to stabilize for at least 30 minutes and using an energy use measurement period of not less than 10 minutes. Further, for any dishwasher or dehumidifier in which the power varies over a cycle, as described in section 5, paragraph 5.3.2 of the First Edition, the December 2010 NOPR proposed to require the use of the average power approach in section 5, paragraph 5.3.2(a), with the same 30-minute minimum stabilization and 10-minute minimum measurement periods, as long as the measurement period comprises one or more complete cycles. 75 FR 75290, 75300–01 (Dec. 2, 2010). DOE additionally proposed specific methodology for conventional cooking products in which power varies as a function of the time displayed. In that case, testers are allowed to choose measuring standby power by means of either:

(a) *10-Minute Test*

(1) Allow the product to stabilize according to section 5, paragraph 5.3 of IEC Standard 62301 (First Edition), which requires a minimum of 5 minutes;

(2) Set the clock time to 3:23;

(3) Allow another stabilization period until the clock time reaches 3:33;

(4) Use the average power approach in section 5, paragraph 5.3.2(a) to measure standby mode power for a period of 10 minutes +0/−2 seconds; or

(b) *12-Hour Test*

(1) At any clock time, allow the product to stabilize according to section 5, paragraph 5.3 of IEC Standard 62301 (First Edition), which requires a minimum of 5 minutes;

(2) Use the average power approach in section 5, paragraph 5.3.2(a) to measure standby mode power for a period of 12 hours +0/−30 seconds.

According to the proposal, manufacturers could elect to conduct either a 10-minute test or a 12-hour test, or both, and results of the 10-minute test that are within ± 2 percent of the results for the 12-hour test would be deemed to

be representative of average energy use. *Id.* at 75302–04, 75328.

For today's supplemental notice, to determine the potential impacts of referencing methodology from IEC Standard 62301 (Second Edition) rather than from the First Edition, DOE compared the provisions allowed by each under different scenarios of power consumption stability.

1. *Stable Power Consumption*

According to section 5, paragraph 5.3.1 of IEC Standard 62301 (First Edition), power consumption is defined as stable if it varies by less than 5 percent over 5 minutes. In such a case, a direct reading may be made at the end of the measurement period. With the proposed clarifications in the December 2010 NOPR, the total test time would be at minimum 40 minutes (comprised of a minimum 30-minute stabilization period, followed by a minimum 10-minute period during which the stability criterion could be evaluated and a direct power reading taken.) Alternatively, the tester may select an average power or accumulated energy approach, again with a minimum 30-minute stabilization period and a minimum 10-minute measurement period. The average power approach would simply require a different reading to be taken from the instrument (true average power instead of a direct reading of instantaneous power), while the accumulated energy approach would require the calculation of power by dividing an accumulated energy by the duration of the measurement period.

In comparison, section 5, paragraph 5.3.4 of IEC Standard 62301 (Second Edition) specifies a direct meter reading method that can be used for stable power consumption, in which a minimum 30-minute stabilization period must be observed, followed by a first power measurement. After an additional period of 10 minutes, a second power measurement is taken. If the average of the two measurements divided by the time interval between them meets certain threshold criteria, then the power consumption is considered to be the average of the two power measurements. Thus, the total test period would still be at minimum 40 minutes. DOE agrees that this method likely improves the validity of the test results, as it is a more stringent measure of the stability of the power consumption over a longer period of time than the First Edition requires. However, if the threshold criteria are not met at the end of the test, a different measurement method must be used, increasing test time and complexity. Further, the Second Edition specifies that the direct reading method shall not be used for verification purposes. Both of these qualifications potentially increase test burden as compared to the First Edition, possibly requiring the tester to conduct the more complex methodology of the methods available under the Second Edition.

DOE notes that section 5, paragraph 5.3.2 of IEC Standard 62301 (Second Edition) identifies a sampling method as the preferred means for all power consumption measurements and the fastest test method when the power is stable. For any non-cyclic power consumption, power readings are initially recorded over a period of at least 15 minutes after energizing the product. Data from the first third of the measurement period are discarded, and stability is evaluated by a linear regression through all power readings in the second two-thirds of the data. If the slope of the linear regression is less than 10 milliwatts per hour (mW/h) for input power less than or equal to 1.0 W, or less than 1 percent of the input power per hour for input power greater than 1.0 W, the power consumption is calculated as the average of the power readings during the second two-thirds of the measurement period. If the slope of the linear regression does not meet these stability criteria, the total period is continuously extended until the stability criteria are met for the second two-thirds of the data. In some cases, this is a more stringent requirement than the stability criteria of IEC Standard 62301 (First Edition). The lack of a definitive test period means that the test duration could extend past 15 minutes for certain products—up to 3 hours is allowed in the Second Edition—and could introduce added test burden as compared to the First Edition.

2. Unstable, Non-Cyclic Power Consumption

Section 5, paragraph 5.3 from IEC Standard 62301 (First Edition), which DOE proposed in the December 2010 NOPR to incorporate by reference with clarification, specifies that either an average power method or accumulated energy approach could be used for measuring non-cyclic unstable power consumption. As described previously, the clarifications proposed in the December 2010 NOPR would limit total test duration to 40 minutes.

In contrast, the Second Edition requires the use of either a sampling method or average reading method for measuring power consumption in standby mode or off mode. The sampling method is the same as described previously, but the measurement period must be at least 60 minutes, and the cumulative average of all data points recorded during the second two-thirds of the total period must fall within a band of ± 0.2 percent.

The average reading method in section 5, paragraph 5.3.3 IEC Standard 62301 (Second Edition) comprises both an average power method and accumulated energy method, either of which may be selected for unstable, non-cyclic power. For both types of the average reading method, a 30-minute stabilization period is specified, followed by two comparison measurement periods of not less than 10 minutes each. The average power values, either measured directly or calculated from accumulated energy during each period, are compared to determine whether they agree to within certain threshold criteria. If the threshold is not achieved, the comparison periods are each extended in approximately equal increments until the threshold is met. If agreement is not achieved after reaching 30 minutes for each comparison period, the sampling method must then be used. Therefore, the minimum test period is 50 minutes, but may extend up to 90 minutes, at which time an additional test may be required.

DOE believes that the stability criteria in either method improves the accuracy and representativeness of the measurement as compared to the First Edition, but would cause the required test time to increase (potentially quite significantly), with a corresponding increase in manufacturer burden due to the additional time and complexity of the test conduct.

3. Cyclic Power Consumption

Dishwashers and Dehumidifiers

As noted previously, DOE proposed in the December 2010 NOPR for these products to use the average power approach of section 5, paragraph 5.3.2(a) in IEC Standard 62301 (First Edition), with a minimum 30-minute stabilization period and 10-minute measurement period. The First Edition also requires that at least one or more complete cycles be measured.

In the Second Edition, cyclic power must be measured according to the sampling method in section 5, paragraph 5.3.2, but this method requires a measurement period of at least four complete cycles (for a total of at least 40 minutes) divided into two comparison periods, with stability criteria evaluated by calculating the difference in average power measured in each comparison period divided by the time difference of the mid-point of each

comparison period. This ''slope'' must be less than 10 mW/h for input powers less than or equal to 1 W, and less than 1 percent of the input power per hour for input powers greater than 1 W. If the appropriate stability criterion is not met, additional cycles are added to each comparison period until the criterion is achieved. Once stability has been reached, the power consumption is calculated as the average of all readings from both comparison periods. DOE believes that this methodology produces an improved measurement over the methodology from the First Edition, but the test duration could extend significantly longer, again potentially introducing issues of increased test burden.

Conventional Cooking Products

For conventional cooking products in which standby mode power consumption varies as a function of displayed time, DOE proposed in the December 2010 NOPR to require the use of either the 10-minute or 12-hour test methodology described previously, based on the average power approach of section 5, paragraph 5.3.2(a) of IEC Standard 62301 (First Edition). If the results of the 10-minute test agree to within ±2 percent with the results of the 12-hour test, the 10-minute test results would be deemed representative and would require a minimum of 25 minutes to conduct. If a full 12-hour test is used, total test duration would be 12 hours and 5 minutes.

Under the Second Edition, testers would be required to use the sampling method of section 5, paragraph 5.3.2 for conventional cooking products that consume varying power as a function of the displayed time due to the cyclic nature of this power consumption. Because all of the clock displays which DOE observed to be incorporated in conventional cooking products are based on a 12-hour cycle, such a product which consumes varying power as a function of the displayed time would be required under the Second Edition to be tested for a minimum of 4 cycles, or 48 hours, in addition to an initial stabilization period of not less than 10 minutes. DOE notes that this test duration would impose a greatly increased test burden on manufacturers, particularly in comparison to the previously proposed 10-minute methodology.

4. Conclusions on Test Methodology

DOE, in evaluating IEC Standard 62301 (Second Edition) in comparison to the First Edition, confers substantial weight to the considerable body of comments on and input to the provisions and methodology that IEC developed as part of its latest revision process. DOE recognizes that, in some cases, test burden and complexity would be increased by requiring the use of the test methods specified in the Second Edition. However, DOE believes that in most cases, this added burden on manufacturers has been sufficiently considered by the IEC voting members as being outweighed by the improved accuracy and representativeness of the resulting power consumption measurement. Furthermore, manufacturers were aware of these differences, but nevertheless, they overwhelmingly expressed support for DOE's use of the Second Edition. In particular, DOE tentatively concludes that the application of the provisions of the Second Edition to all power measurements in standby mode and off mode for dishwashers and dehumidifiers would be appropriate, and is proposing incorporation by reference of the relevant paragraphs of section 5.3 of IEC Standard 62301 (Second Edition) in the test procedures for these products. Further, DOE observes that although the Second Edition allows the choice of multiple test methods for both stable and unstable non-cyclic power consumption, the IEC preferred sampling method provides for a test duration that is approximately the same or shorter than the allowable IEC alternative methods and does not require classification of the nature of the power consumption (*e.g.,* stable or unstable, non-cyclic) in advance of the test. By monitoring the variation in power consumption during the test, the test operator could determine whether it is stable or unstable, and, thus, the required duration of the sampling periods. For cyclic power consumption, the Second Edition requires the use of the sampling method. Thus, DOE proposes in today's SNOPR to specify the use of the sampling method in section 5.3.2 of IEC Standard 62301 (Second Edition) for all measures of standby mode and off mode power consumption for residential dishwashers and dehumidifiers.

Similarly, for conventional cooking products, DOE has tentatively concluded that section 5.3 of the Second Edition includes provisions that are appropriate for measuring off mode and standby modes (except in the case of a unit's clock whose power consumption varies by the time displayed), and that the sampling method in section 5.3.2 of the Second Edition would also provide for measurements with minimal test burden. Thus, DOE proposes for conventional cooking products to require the use of the sampling method in section 5.3.2 of the Second Edition, except as follows. In the narrow case of cooking products with power consumption that varies as a function of the time displayed, DOE tentatively concludes that the application of the test methodology from the Second Edition would cause manufacturers to incur significant burden that would not be warranted by any potential improved accuracy of the test measurement. For this reason, DOE continues to propose in this supplemental notice the 10-minute and 12-hour test methods for these products in the conventional cooking products test procedure. Because DOE proposes to base the other provisions incorporated by reference from IEC Standard 62301 on the Second Edition, DOE has revised its proposal regarding the 10-minute and 12-hour tests to include language equivalent to the average power method from the First Edition, without incorporating the First Edition by reference.

To this end, this supplemental notice is also proposing to amend the reference in 10 CFR 430.3 to add a reference to IEC Standard 62301 (Second Edition). DOE is not proposing to replace the reference to the First Edition in 10 CFR 430.3, because several test procedures for other covered products not addressed in today's supplemental notice incorporate provisions from it. In addition, there are a number of editorial changes necessary in the various appendices addressed in today's supplemental notice to allow for the correct referencing to the Second Edition. For example, the definition sections need to define the IEC Standard 62301 as the Second Edition instead of the First Edition. Also, there are some section numbering differences in the Second Edition which impact the text of the measurement provisions of the relevant test procedures.

DOE further notes that the proposed amendments to the cooking products test procedure would retain the references to certain provisions of IEC Standard 62301 (First Edition) which were adopted in the March 2011 Interim Final Rule for the purposes of measuring standby mode and off mode energy use in microwave ovens. As discussed above, the March 2011 Interim Final Rule invited comments on the merits of adopting additional provisions of IEC Standard 62301 (Second Edition) in the microwave oven test procedure (76 FR 12825, 12833 (March 9, 2011)), but at this time, DOE has not revised its microwave oven test procedure accordingly. Because today's supplemental notice addresses such

energy use for conventional cooking products but not microwave ovens, DOE is not proposing to remove or amend the references to the First Edition in the cooking products test procedure, which contains both types of products, other than to clarify that the First Edition is being referenced for microwave ovens rather than the Second Edition. DOE's proposal for conventional cooking products, based on relevant sections of IEC Standard 62301 (Second Edition) would neither be affected by, nor impact, the testing procedures for microwave ovens other than section renumbering as appropriate.

B. Technical Corrections

Due to a transcription error in publication, the December 2010 NOPR erroneously specified certain dates in the regulatory text for the proposed test procedure amendments. Specifically, the December 2010 NOPR indicated that representations as to energy use in standby mode and off mode for dishwashers, conventional cooking products, and dehumidifiers made after May 31, 2011, would have to be based upon the proposed amended dishwasher test procedure in 10 CFR part 430, subpart B, appendix C, the amended conventional cooking products test procedure in appendix I, and the amended dehumidifier test procedure in appendix X. 75 FR 75290, 75324, 75326, 75333 (Dec. 2, 2010). Similarly, the compliance date was erroneously specified in the December 2010 NOPR as May 31, 2011, in the calculations of dishwasher estimated annual operating cost and estimated annual energy use that incorporate measures of standby mode and off mode energy use, as proposed for the test procedures in 10 CFR 430.23(c). 75 FR 75290, 75321–22 (Dec. 2, 2010). In each of these instances, the December 2010 NOPR should have specified the date as ''180 days after date of publication of the test procedure final rule in the **Federal Register**.'' DOE is proposing to make this correction to the dates in today's SNOPR, and clarifies that manufacturers would not be subject to a May 31, 2011, deadline for any of the products as part of this rulemaking.

C. Compliance With Other EPCA Requirements

1. Test Burden

EPCA requires that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3))

In the December 2010 NOPR, DOE noted that the proposed amendments to the residential dishwasher, dehumidifier, and conventional cooking products test procedures would incorporate a test standard that is accepted internationally for measuring power consumption in standby mode and off mode (IEC Standard 62301). DOE analyzed the available versions of IEC Standard 62301 at that time—IEC Standard 62301 (First Edition), IEC Standard 62301 (CDV), and IEC Standard 62301 (FDIS)—and determined that the proposed amendments to the residential dishwashers, dehumidifiers, and conventional cooking products test procedures would produce standby mode and off mode average power consumption measurements that are representative of an average use cycle. DOE also determined that the test methods and equipment that the amendments would require for measuring standby mode and off mode power in these products would not be substantially different from the test methods and equipment required in the current DOE tests. Thus, DOE tentatively concluded that the proposed test procedure amendments would not require manufacturers to make significant investments in test facilities and new equipment. In sum, DOE tentatively concluded in the December 2010 NOPR that the amended test procedures would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct. 75 FR 75290, 75316 (Dec. 2, 2010).

Today's supplemental proposed amendments to the DOE test procedures are based on an updated version of IEC Standard 62301, IEC Standard 62301 (Second Edition), which has been the subject of significant review and input from interested parties and, thus, continues to be an internationally accepted test standard for measuring standby mode and off mode power consumption. As discussed in section 0 of this notice, DOE believes that the provisions of IEC Standard 62301 (Second Edition) that it proposes to incorporate by reference through today's SNOPR provide a means to measure power consumption with greater accuracy and repeatability than the provisions from IEC Standard 62301 (First Edition) that were originally proposed in the December 2010 NOPR. For this reason, DOE tentatively concludes that today's supplemental proposed amendments would also provide measurements representative of average consumer use of the product under test, even if the test conditions and procedures may not be identical to average consumer use (for example, specified display times). DOE further believes these new provisions in the applicable sections of IEC Standard 62301 (Second Edition) improve test results without undue testing burden. DOE acknowledges that certain methods from IEC Standard 62301 (Second Edition) may increase test duration somewhat, but where such an increase was deemed excessive (*i.e.,* for products with clocks that can vary in power consumption as a function of time displayed), DOE retained the method previously proposed in order to mitigate test burden. DOE also believes that the potential for increased test burden in other power consumption measurements is offset by more reasonable requirements for testing equipment, while maintaining measurement accuracy deemed acceptable and practical by voting members for IEC Standard 62301 (Second Edition). Thus, DOE tentatively concludes that the amended test procedures newly proposed in today's SNOPR would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct.

2. Potential Incorporation of IEC Standard 62087

Under 42 U.S.C. 6295(gg)(2)(A), EPCA directs DOE to consider IEC Standard 62087 when amending test procedures to include standby mode and off mode power measurements. For the December 2010 NOPR, DOE reviewed IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment'' (Second Edition 2008–09), and tentatively determined that it would not be applicable to measuring power consumption of electrical appliances such as dishwashers, dehumidifiers, and conventional cooking products. Therefore, DOE tentatively concluded that referencing IEC Standard 62087 is not necessary for the proposed amendments to the test procedures that are the subject of this rulemaking. 75 FR 75290, 75316 (Dec. 2, 2010). For the same reason, DOE maintains the same tentative conclusion for today's SNOPR.

3. Integration of Standby Mode and Off Mode Energy Consumption Into the Efficiency Metrics

Under 42 U.S.C. 6295(gg)(2)(A), EPCA requires that standby mode and off mode energy consumption be ''integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product'' unless the current test procedures already fully account for the standby mode and off mode energy consumption or if such an integrated test procedure is technically infeasible. As noted in the December 2010 NOPR, DOE proposed to incorporate such energy consumption into existing metrics (''estimated annual energy use'' and ''estimated annual operating cost'' for dishwashers and ''estimated annual operating cost'' for conventional cooking products) and into new metrics (''integrated energy factor'' (IEF) for dehumidifiers and IEF and ''integrated annual energy consumption'' for conventional cooking products). 75 FR 75290, 75316 (Dec. 2, 2010).

EPCA further provides that test procedure amendments adopted to comply with the new statutory requirements for standby mode and off mode energy consumption shall not be used to determine compliance with previously established energy conservation standards. (42 U.S.C. 6295(gg)(2)(C)) Under this provision, the test procedure amendments pertaining to standby mode and off mode energy consumption that DOE proposes to adopt in this rulemaking would not apply to, and would have no impact on, existing energy conservation standards (although representations as to standby mode and off mode energy use for dishwashers, dehumidifiers, and conventional cooking products made later than 180 days after the date of publication of the final rule in this rulemaking would be required to be based upon results generated under the amended test procedures).

Even though 42 U.S.C. 6295(gg)(2)(C) clearly states that the test procedure amendments for measurement of standby mode and off mode energy consumption shall not apply in terms of compliance with existing energy conservation standards, DOE must nonetheless determine the effect of such test procedure amendments on measured energy efficiency, measured energy use, or measured water use of any covered product, pursuant to 42 U.S.C. 6293(e)(1). DOE provided analysis in the December 2010 NOPR which determined that the proposed amendments would not measurably alter the existing energy efficiency and energy use metrics for residential dishwashers, dehumidifiers, and conventional cooking products. In addition, those proposed amendments in each test procedure would clarify that manufacturers would not be required to use the provisions relating to standby mode and off mode energy use until the compliance date of new energy conservation standards addressing such energy use for the relevant product. Thus, no amendments to the energy conservation standards would be required pursuant to 42 U.S.C. 6293(e)(2), because such test procedure amendments would not impact the existing energy conservation standards until the compliance date of a subsequent final rule that amends the standard to comprehensively address standby mode and off mode energy consumption. 75 FR 75290, 75316–17 (Dec. 2, 2010).

Because DOE's proposed amendments in today's SNOPR: (1) Would not produce measurably different evaluations of standby mode and off mode energy use through the use of provisions from IEC Standard 62301 (Second Edition) in place of those from IEC Standard 62301 (First Edition); (2) would not alter the approaches for integrating standby mode and off mode energy use into the energy efficiency and energy use metrics; and (3) would retain the clarifications regarding test procedure and energy conservation standards compliance dates, DOE tentatively concludes that the supplemental proposed amendments would also comply with the EPCA requirements under 42 U.S.C. 6293(e)(2) and 6295(gg)(2)(A) and (C).

4. Certification Requirements

As codified at 42 U.S.C. 6299–6305 and 6316, EPCA authorizes DOE to enforce compliance with the energy and water conservation standards established for certain consumer products and industrial/commercial equipment. (42 U.S.C. 6299–6305 (consumer products), 6316 (industrial equipment)) On March 7, 2011, the Department published a final rule in the **Federal Register**, which revised, consolidated, and streamlined its existing certification, compliance, and enforcement regulations for certain consumer products and industrial/commercial equipment covered under EPCA, including dishwashers, dehumidifiers, and conventional cooking products. 76 FR 12422. The certification regulations are codified at 10 CFR 429.19 (dishwashers), 10 CFR 429.23 (conventional cooking tops, conventional ovens, microwave ovens), and 10 CFR 429.36 (dehumidifiers).

The certification requirements for each of the products covered in today's SNOPR consist of a sampling plan for selection of units for testing and requirements for certification reports. Because the proposed amendments to the residential dishwasher, dehumidifier, and conventional cooking products test procedures would not revise the current energy conservation standards, DOE is not proposing any amendments to the certification reporting requirements for these products. However, because DOE proposes in today's SNOPR to introduce a new metric (IEF) for both conventional cooking products and dehumidifiers, DOE additionally proposes amended provisions in the sampling plan at 10 CFR 429.23 and 10 CFR 429.36 that would include IEF along with the existing measure of EF. No such amendments are proposed for residential dishwashers, because DOE is not proposing any new energy efficiency metric for these products.

IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the December 2010 NOPR remain unchanged for this SNOPR. These determinations are set forth in the December 2010 NOPR. 75 FR 75290, 75317–19 (Dec. 2, 2010). DOE acknowledges that certain provisions of IEC Standard 62301 (Second Edition) that are proposed to be incorporated by reference have the potential for somewhat greater test time as compared to the provisions from IEC Standard 62301 (First Edition), and, therefore, DOE gave particular consideration to its review under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). DOE believes that the proposed amendments in today's SNOPR would still result in a duration of standby mode and off mode testing that is generally not expected to exceed the time required to conduct current energy testing. DOE further believes that the newly proposed revisions would not alter the costs it estimated for standby mode and off mode testing in the December 2010 NOPR. Thus, DOE continues to tentatively conclude and certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

V. Public Participation

A. Submission of Comments

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

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

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

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

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

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

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

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

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

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via e-mail, postal mail, or hand delivery 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 e-mail or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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

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

B. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. *Incorporation of IEC Standard 62301 (Second Edition).* DOE invites comment on the adequacy of IEC Standard 62301 (Second Edition) to measure standby mode and off mode power consumption for residential dishwashers, dehumidifiers, and conventional cooking products, and the suitability of incorporating into DOE regulations the following specific provisions from IEC Standard 62301 (Second Edition): section 4 (''General conditions for measurements''), paragraph 4.2, ''Test room,'' paragraph 4.3.2, ''Supply voltage waveform,'' and paragraph 4.4, ''Power measuring instruments,'' and section 5 (''Measurements''), paragraph 5.1, ''General,'' paragraph 5.2 ''Preparation of product'', and paragraph 5.3.2, ''Sampling method.'' (*See* section 0)

2. *Methods Based on IEC Standard 62301 (First Edition) for Conventional Cooking Products with Clocks.* DOE welcomes comment on its determination that the provisions of IEC Standard 62301 (Second Edition) would cause manufacturers to incur significant test burden for conventional cooking products with power consumption that varies as a function of the time displayed, and the continued proposal of 10-minute and 12-hour test methods of measuring standby mode power for these products in the conventional cooking products test procedure. (*See* section 0)

3. *Test Burden.* DOE seeks comment on its analysis of the test burden associated with standby mode and off mode testing as proposed in today's SNOPR. (*See* sections 0 and 0)

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Buildings and facilities, Business and industry, Energy conservation, Grant programs—energy, Housing, Reporting and recordkeeping requirements, Technical assistance.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on August 30, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 430 of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 429.23 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 429.23 Conventional cooking tops, conventional ovens, microwave ovens.

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, integrated energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

3. Section 429.36 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 429.36 Dehumidifiers.

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, integrated energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

2. Section 430.3 is amended by adding paragraph (l)(2) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(l) * * *

(2) IEC Standard 62301 (''IEC 62301''), *Household electrical appliances–Measurement of standby power* (Edition 2.0, 2011–01), IBR approved for Appendix C, Appendix I, and Appendix X.

* * * * *

3. Section 430.23 is amended by revising paragraphs (c), (i), and (z) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(c) *Dishwashers.* (1) The Estimated Annual Operating Cost (EAOC) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured before (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$$EAOC = (D_e \times S) + (D_e \times N \times (M - (E_D/2)))$$

(B) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$$EAOC = (D_e BV \times V\ E_{TSO}) + (D_e \times N \times (M - (E_D/2)))$$

(C) For dishwashers not having a truncated normal cycle, and which are manufactured before (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$$EAOC = (D_e \times S) + (D_e \times N \times M)$$

(D) For dishwashers not having a truncated normal cycle, and which are manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$$EAOC = (D_e \times E_{TSO}) + (D_e \times N \times M)$$

Where:

D_e = the representative average unit cost of electrical energy, in dollars per kilowatt-hour, as provided by the Secretary,

S = the annual simplified standby energy consumption in kilowatt-hours per year and determined according to section 5.6 of appendix C to this subpart,

E_{TSO} = the annual standby mode and off mode energy consumption in kilowatt-hours per year and determined according to section 5.7 of appendix C to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine energy consumption per-cycle for the normal cycle as defined in section 1.10 of appendix C to this subpart, in kilowatt-hours and determined according to section 5.1 of appendix C to this subpart,

E_D = the drying energy consumption defined as energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle and determined according to section 5.2 of appendix C to this subpart.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured before (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$$EAOC = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$$

(B) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$$EAOC = (D_e \times E_{TSO}) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$$

(C) For dishwashers not having a truncated normal cycle, and which are manufactured before (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$$EAOC = (D_e \times S) + (D_e \times N \times M) + (D_e \times N \times W)$$

(D) For dishwashers not having a truncated normal cycle, and which are

manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$EAOC = (D_e \times E_{TSO}) + (D_e \times N \times M) + (D_e \times N \times W)$

Where:

D_e, S, E_{TSO}, N, M, and E_D, are defined in paragraph (c)(1)(i) of this section, and

W = the water energy consumption per cycle for the normal cycle as defined in section 1.10 of appendix C to this subpart, in kilowatt-hours per cycle and determined according to section 5.4 of appendix C to this subpart.

(iii) When gas-heated or oil-heated water is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured before (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$EAOC_g = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$

(B) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$EAOC_g = (D_e \times E_{TSO}) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$

(C) For dishwashers not having a truncated normal cycle, and which are manufactured before (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$EAOC_g = (D_e \times S) + (D_e \times N \times M) + (D_g \times N \times W_g)$

(D) For dishwashers not having a truncated normal cycle, and which are manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***):

$EAOC_g = (D_e \times E_{TSO}) + (D_e \times N \times M) + (D_g \times N \times W_g)$

Where:

D_e, S, E_{TSO}, N, M, and E_D are defined in paragraph (c)(1)(i) of this section,

D_g = the representative average unit cost of gas or oil, as appropriate, in dollars per Btu, as provided by the Secretary, and

W_g = the water energy consumption per cycle for the normal cycle as defined in section 1.10 of appendix C to this subpart, in Btus per cycle and determined according to section 5.5 of appendix C to this subpart.

(2) The energy factor for dishwashers, EF, expressed in cycles per kilowatt-hour must be rounded to two decimal places and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart,

$EF = 1/(M - (E_D/2))$

(B) For dishwashers not having a truncated normal cycle,

$EF = 1/M$

Where:

M, and E_D are defined in paragraph (c)(1)(i) of this section.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart,

$EF = 1/(M - (E_D/2) + W)$

(B) For dishwashers not having a truncated normal cycle,

$EF = 1/(M + W)$

Where:

M, and E_D are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(3) The estimated annual energy use, EAEU, expressed in kilowatt-hours per year must be rounded to the nearest kilowatt-hour per year and is defined as follows:

(i) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are:

(A) Manufactured before (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***); or

(B) Manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***) and for which EAEU is calculated to determine compliance with energy conservation standards for dishwashers:

$EAEU = (M - (E_D/2) + W) \times N + S$

(C) For dishwashers having a truncated normal cycle as defined in section 1.21 of appendix C to this subpart, and which are manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***) and for which EAEU is calculated for purposes other than to determine compliance with energy conservation standards for dishwashers:

$EAEU = (M - (E_D/2) + W) \times N + E_{TSO}$

Where:

M, E_D, N, S, and E_{TSO} are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(ii) For dishwashers not having a truncated normal cycle and which are:

(A) Manufactured before (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***); or

(B) Manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***) and for which EAEU is calculated to determine compliance with energy conservation standards for dishwashers:

$EAEU = (M + W) \times N + S$

(C) For dishwashers not having a truncated normal cycle and which are manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* ***Federal Register***) and for which EAEU is calculated for purposes other than to determine compliance with energy conservation standards for dishwashers:

$EAEU = (M+W) \times N + E_{TSO}$

Where:

M, N, S, and E_{TSO} are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(4) The water consumption, V, expressed in gallons per cycle and defined in section 5.3 of appendix C to this subpart, must be rounded to one decimal place.

(5) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix C to this subpart.

* * * * *

(i) *Kitchen ranges and ovens.* (1) The estimated annual operating cost for conventional ranges, conventional cooking tops, and conventional ovens shall be the sum of the following products:

(i) The total integrated annual electrical energy consumption for any electrical energy usage, in kilowatt-hours (kWhs) per year, times the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The total annual gas energy consumption for any natural gas usage, in British thermal units (Btus) per year, times the representative average unit cost for natural gas, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act; plus

(iii) The total annual gas energy consumption for any propane usage, in Btus per year, times the representative average unit cost for propane, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act. The total annual energy consumption for conventional ranges, conventional cooking tops, and

conventional ovens shall be as determined according to sections 4.3, 4.2.2, and 4.1.2, respectively, of appendix I to this subpart. For conventional gas cooking tops, total integrated annual electrical energy consumption shall be equal to E_{CTSO}, defined in section 4.2.2.2.4 of appendix I to this subpart. The estimated annual operating cost shall be rounded off to the nearest dollar per year.

(2) The cooking efficiency for conventional cooking tops and conventional ovens shall be the ratio of the cooking energy output for the test to the cooking energy input for the test, as determined according to sections 4.2.1 and 4.1.3, respectively, of appendix I to this subpart. The final cooking efficiency values shall be rounded off to three significant digits.

(3) [Reserved]

(4) The energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total annual energy input, as determined according to sections 4.3, 4.2.3.1, and 4.1.4.1, respectively, of appendix I to this subpart. The final energy factor values shall be rounded off to three significant digits.

(5) The integrated energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total integrated annual energy input, as determined according to sections 4.3, 4.2.3.2, and 4.1.4.2, respectively, of appendix I to this subpart. The final integrated energy factor values shall be rounded off to three significant digits.

(6) There shall be two estimated annual operating costs, two cooking efficiencies, and two energy factors for convertible cooking appliances—

(i) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with natural gas; and

(ii) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with LP-gas.

(7) There shall be two integrated energy factors for convertible cooking appliances—

(i) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with natural gas; and

(ii) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with LP-gas.

(8) The estimated annual operating cost for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(1) of this section using the total annual gas energy consumption for natural gas times the representative average unit cost for natural gas.

(9) The estimated annual operating cost for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(1) of this section using the representative average unit cost for propane times the total annual energy consumption of the test gas, either propane or natural gas.

(10) The cooking efficiency for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(2) of this section when the appliance is tested with natural gas.

(11) The cooking efficiency for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(2) of this section, when the appliance is tested with either natural gas or propane.

(12) The energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with natural gas.

(13) The integrated energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(7)(i) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas.

(14) The energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with either natural gas or propane.

(15) The integrated energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(7)(ii) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas or propane.

(16) Other useful measures of energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix I to this subpart.

* * * * *

(z) *Dehumidifiers.*

(1) The energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh), shall be measured in accordance with section 4.1 of appendix X of this subpart.

(2) The integrated energy factor for dehumidifiers, expressed in L/kWh, shall be determined according to paragraph 5.2 of appendix X to this subpart.

* * * * *

Appendix C—[Amended]

4. Appendix C to subpart B of part 430 is amended:

a. By revising the introductory text after the appendix heading;

b. By revising section 1, Definitions;

c. By revising section 2, Testing Conditions;

d. In section 3. Instrumentation, by:

1. Adding new section 3.8;

e. In section 4, Test Cycle and Measurements, by:

1. Revising section 4.4; and

2. Adding new sections 4.5 and 4.5.1 through 4.5.3;

f. In section 5, Calculation of Derived Results From Test Measurements, by:

1. Revising section 5.6; and

2. Adding new section 5.7.

The additions and revisions read as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 4.5, 4.5.1 through 4.5.3, and 5.7 of this Appendix C) need not be performed to determine compliance with energy conservation standards for dishwashers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after (*date 180 days after date of publication of the test procedure final rule in the* ***Federal Register***) must be based upon results generated under this test procedure using sections 4.5, 4.5.1 through 4.5.3, and 5.7 and disregarding sections 4.4 and 5.6 of this Appendix, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1. Definitions

1.1 *Active mode* means a mode in which the dishwasher is connected to a mains power source, has been activated, and is performing one of the main functions of washing, rinsing, or drying (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical, and/or electrical means, or is involved in functions necessary for these main functions, such as admitting water into the dishwasher or pumping water out of the dishwasher.

1.2 *AHAM* means the Association of Home Appliance Manufacturers.

1.3 *Compact dishwasher* means a dishwasher that has a capacity of less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this Appendix.

1.4 *Cycle* means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.5 *Cycle finished mode* means a standby mode which provides continuous status display following operation in active mode.

1.6 *Cycle type* means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.7 *IEC 62301* means the standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0, 2011–01) (incorporated by reference; see § 430.3).

1.8 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.9 *Non-soil-sensing dishwasher* means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.10 *Normal cycle* means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.

1.11 *Off mode* means a mode in which the dishwasher is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.12 *Power-dry feature* means the introduction of electrically-generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.13 *Preconditioning cycle* means any cycle that includes a fill, circulation, and drain to ensure that the water lines and sump area of the pump are primed.

1.14 *Sensor heavy response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, four place settings of which are soiled according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3). For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.15 *Sensor light response* means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3).

1.16 *Sensor medium response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, two place settings of which are soiled according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3). For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.

1.17 *Simplified standby mode* means the lowest power consumption mode which cannot be switched off or influenced by the user and that may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions.

1.18 *Soil-sensing dishwasher* means a dishwasher that has the ability to adjust any energy-consuming aspect of a wash cycle based on the soil load of the dishes.

1.19 *Standard dishwasher* means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this Appendix.

1.20 *Standby mode* means a mode in which the dishwasher is connected to a main power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) to facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.21 *Truncated normal cycle* means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.22 *Truncated sensor heavy response* means the sensor heavy response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.23 *Truncated sensor light response* means the sensor light response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.24 *Truncated sensor medium response* means the sensor medium response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.25 *Water-heating dishwasher* means a dishwasher which, as recommended by the manufacturer, is designed for heating cold inlet water (nominal 50 °F) or designed for heating water with a nominal inlet temperature of 120 °F. Any dishwasher designated as water-heating (50 °F or 120 °F inlet water) must provide internal water heating to above 120 °F in a least one wash phase of the normal cycle.

2. Testing Conditions

2.1 *Installation requirements.* Install the dishwasher according to the manufacturer's instructions. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.2 *Electrical energy supply.*

2.2.1 *Dishwashers that operate with an electrical supply of 115 volts.* Maintain the electrical supply to the dishwasher at 115 volts ±2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer.

2.2.2 *Dishwashers that operate with an electrical supply of 240 volts.* Maintain the electrical supply to the dishwasher at 240 volts ±2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer.

2.2.3 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.3 *Water temperature.* Measure the temperature of the water supplied to the dishwasher using a temperature measuring device as specified in section 3.1 of this Appendix.

2.3.1 *Dishwashers to be tested at a nominal 140 °F inlet water temperature.* Maintain the water supply temperature at 140° ±2 °F.

2.3.2 *Dishwashers to be tested at a nominal 120 °F inlet water temperature.* Maintain the water supply temperature at 120° ±2 °F.

2.3.3 *Dishwashers to be tested at a nominal 50 °F inlet water temperature.* Maintain the water supply temperature at 50° ±2 °F.

2.4 *Water pressure.* Using a water pressure gauge as specified in section 3.4 of this Appendix, maintain the pressure of the water supply at 35 ±2.5 pounds per square inch gauge (psig) when the water is flowing.

2.5 *Ambient temperature.*

2.5.1 *Active mode ambient and machine temperature.* Using a temperature measuring

device as specified in section 3.1 of this Appendix, maintain the room ambient air temperature at 75° ±5 °F and ensure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

2.5.2 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.6 *Test cycle and load.*

2.6.1 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 140 °F.* These units must be tested on the normal cycle and truncated normal cycle without a test load if the dishwasher does not heat water in the normal cycle.

2.6.2 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F.* These units must be tested on the normal cycle with a clean load of eight place settings plus six serving pieces, as specified in section 2.7 of this Appendix. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity.

2.6.3 *Soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F, 120 °F, or 140 °F.* These units must be tested first for the sensor heavy response, then tested for the sensor medium response, and finally for the sensor light response with the following combinations of soiled and clean test loads.

2.6.3.1 For tests of the sensor heavy response, as defined in section 1.14 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Four of the eight place settings must be soiled according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the four place settings must be soiled according to ANSI/AHAM DW–1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.2 For tests of the sensor medium response, as defined in section 1.16 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the eight place settings must be soiled according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings must be soiled according to ANSI/AHAM DW–1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.3 For tests of the sensor light response, as defined in section 1.15 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the eight place settings must be soiled with half of the soil load specified for a single place setting according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings must be soiled with half of the soil load specified for a single place setting according to the ANSI/AHAM DW–1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.7 *Test load.*

Dishware/glassware/ flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Dinner Plate	Corning Comcor®/Corelle®	10 inch Dinner Plate	6003893		
Bread and Butter Plate	Corning Comcor®/Corelle®	6.75 inch Bread & Butter	6003887	Arzberg	8500217100
Fruit Bowl	Corning Comcor®/Corelle®	10 oz. Dessert Bowl	6003899	Arzberg	3820513100
Cup	Corning Comcor®/Corelle®	8 oz. Ceramic Cup	6014162	Arzberg	3824732100
Saucer	Corning Comcor®/Corelle®	6 inch Saucer	6010972	Arzberg	3824731100
Serving Bowl	Corning Comcor®/Corelle®	1 qt. Serving Bowl	6003911		
Platter	Corning Comcor®/Corelle®	9.5 inch Oval Platter	6011655		
Glass—Iced Tea	Libbey		551 HT		
Flatware—Knife	Oneida®—Accent		2619KPVF		
Flatware—Dinner Fork	Oneida®—Accent		2619FRSF		
Flatware—Salad Fork	Oneida®—Accent		2619FSLF		
Flatware—Teaspoon	Oneida®—Accent		2619STSF		
Flatware—Serving Fork	Oneida®—Flight		2865FCM		
Flatware—Serving Spoon	Oneida®—Accent		2619STBF		

2.8 *Detergent.* Use half the quantity of detergent specified according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3).

2.9 *Testing requirements.* Provisions in this Appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water-heating dishwashers as defined in section 1.25 of this Appendix.

2.10 *Preconditioning requirements.* Precondition the dishwasher by establishing the testing conditions set forth in sections 2.1 through 2.5 of this Appendix. Set the dishwasher to the preconditioning cycle as defined in section 1.13 of this Appendix, without using a test load, and initiate the cycle.

3. Instrumentation

* * * * *

3.8 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference, see § 430.3).

4. Test Cycle and Measurements

* * * * *

4.4 *Simplified standby mode power.* Connect the dishwasher to a standby wattmeter or a standby watt-hour meter as specified in sections 3.6 and 3.7, respectively, of this Appendix. Select the conditions necessary to achieve operation in the simplified standby mode as defined in section 1.17 of this Appendix. Monitor the power consumption but allow the dishwasher to stabilize for at least 5 minutes. Then monitor the power consumption for at least an additional 5 minutes. If the power level does not change by more than 5 percent from the maximum observed value during the later 5 minutes and if there is no cyclic or pulsing behavior of the load, the load can be considered stable. For stable operation, simplified standby mode power, S_m, can be recorded directly from the standby watt meter in watts or accumulated using the standby watt-hour meter over a period of at least 5 minutes. For unstable operation, the energy must be accumulated using the standby watt-hour meter over a period of at least 5 minutes and must capture the energy use over one or more complete cycles. Calculate the average simplified standby mode power, S_m, expressed in watts by dividing the accumulated energy consumption by the duration of the measurement period.

4.5 *Standby mode and off mode power.* Connect the dishwasher to a standby mode and off mode watt meter as specified in

section 3.8 of this Appendix. Establish the testing conditions set forth in sections 2.1, 2.2, and 2.5.2 of this Appendix. For dishwashers that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the dishwasher to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.5.1 through 4.5.3 of this Appendix.

4.5.1 If the dishwasher has an inactive mode, as defined in section 1.8 of this Appendix, measure and record the average inactive mode power of the dishwasher, P_{IA}, in watts.

4.5.2 If the dishwasher has an off mode, as defined in section 1.11 of this Appendix, measure and record the average off mode power, P_{OM}, in watts.

4.5.3 If the dishwasher has a cycle finished mode, as defined in section 1.5 of this Appendix, measure and record the average cycle finished mode power, P_{CF}, in watts.

5. Calculation of Derived Results From Test Measurements

* * * * *

5.6 *Annual simplified standby energy consumption.* Calculate the estimated annual simplified standby energy consumption. First determine the number of standby hours per year, H_s, defined as:

$H_s = H - (N \times L)$

Where:

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option.

Then calculate the estimated annual simplified standby power use, S, expressed in kilowatt-hours per year and defined as:

$S = S_m \times ((H_s)/1000)$

Where:

S_m = the simplified standby mode power in watts as determined in section 4.4 of this Appendix.

5.7 *Annual standby mode and off mode energy consumption.* Calculate the standby mode and off mode annual energy consumption for dishwashers, E_{TSO}, expressed in kilowatt-hours per year, according to the following:

$E_{TSO} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM}) + (P_{CF} \times S_{CF})] \times K$

Where:

P_{IA}= dishwasher inactive mode power, in watts, as measured in section 4.5.1 of this Appendix.

P_{OM} = dishwasher off mode power, in watts, as measured in section 4.5.2 of this Appendix.

P_{CF} = dishwasher cycle finished mode power, in watts, as measured in section 4.5.3 of this Appendix.

If the dishwasher has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

S_{TOT} equals the total number of inactive mode and off mode hours per year, defined as:

If the dishwasher has cycle finished mode, S_{TOT}, in hours, equals $H_{TSO} - S_{CF}$;

If the dishwasher does not have cycle finished mode, S_{TOT} equals H_{TSO};

H_{TSO} equals the total number of standby mode and off mode hours per year, defined as:

$H_{TSO} = H - (N \times L)$

Where:

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option;

If the dishwasher has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off mode annual hours, S_{OM}, is equal to 0;

If the dishwasher has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to S_{TOT};

S_{CF} = 237, dishwasher cycle finished mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

Appendix I—[Amended]

5. Appendix I to subpart B of part 430 is amended:

a. By revising the Note after the appendix heading;

b. By revising section 1. Definitions;

c. In section 2. Test Conditions, by:

1. Revising sections 2.1, 2.1.1, 2.1.2, 2.1.3, 2.2.1.2, 2.5.2, 2.6, and 2.9.1.3;

d. In section 3. Test Methods and Measurements, by:

1. Revising sections 3.1.1, 3.1.1.1, and 3.1.2;

2. Adding new sections 3.1.1.3, 3.1.1.3.1, 3.1.1.3.2, and 3.1.1.3.3;

3. Adding new sections 3.1.2.2, 3.1.2.2.1, and 3.1.2.2.2;

4. Redesignating sections 3.1.3 and 3.1.3.1 as 3.1.4 and 3.1.4.1 and revising newly redesignated section 3.1.4.1;

5. Adding new sections 3.1.3, 3.1.3.1, 3.1.3.2, and 3.1.3.3;

6. Revising sections 3.2.1, 3.2.1.1, 3.2.1.2, and 3.2.1.4;

7. Redesignating section 3.2.2.1 as 3.2.2.3;

8. Revising section 3.2.2 and adding new sections 3.2.2.1 and 3.2.2.2;

9. Redesignating section 3.2.3 as 3.2.4 and revising newly redesignated section 3.2.4;

10. Adding new section 3.2.3;

11. Revising section 3.3.8; and

12. Revising section 3.3.13;

e. In section 4. Calculation of Derived Results From Test Measurements, by:

1. Revising section 4.1.1, 4.1.1.1, 4.1.2.3.1, 4.1.2.4, and 4.1.2.5.1;

2. Redesignating section 4.1.2.5.2 as 4.1.2.5.3, and revising newly redesignated section 4.1.2.5.3;

3. Adding new section 4.1.2.5.2;

4. Revising section 4.1.2.6.1;

5. Redesignating section 4.1.2.6.2 as 4.1.6.2.3, and revising newly redesignated section 4.1.6.2.3;

6. Adding new section 4.1.2.6.2;

7. Revising section 4.1.4;

8. Adding new sections 4.1.4.1 and 4.1.4.2;

9. Revising section 4.2.1.1;

10. Revising section 4.2.2.1;

11. Adding new sections 4.2.2.1.1 and 4.2.2.1.2;

12. Revising section 4.2.2.2.3;

13. Adding new section 4.2.2.2.4;

14. Revising section 4.2.3;

15. Adding new sections 4.2.3.1 and 4.2.3.2; and

16. Revising section 4.3.

The additions and revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

Note: The procedures and calculations in this Appendix I need not be performed to determine compliance with energy conservation standards for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens at this time. However, any representation related to standby mode and off mode energy consumption of conventional ranges, conventional cooking tops, and conventional ovens made after (*date 180 days after date of publication of the test procedure final rule in the* ***Federal Register***) and of microwave ovens made after September 6, 2011 must be

based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, however, when DOE adopts an energy conservation standard that incorporates standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required. Future revisions may add relevant provisions for measuring active mode in microwave ovens.

1. Definitions

1.1 *Active mode* means a mode in which the product is connected to a mains power source, has been activated, and is performing the main function of producing heat by means of a gas flame, electric resistance heating, or microwave energy. Delay start mode is a one-off, user-initiated, short-duration function that is associated with an active mode.

1.2 *Built-in* means the product is supported by surrounding cabinetry, walls, or other similar structures.

1.3 *Cycle finished mode* means a standby mode in which a conventional cooking top, conventional oven, or conventional range provides continuous status display following operation in active mode.

1.4 *Drop-in* means the product is supported by horizontal surface cabinetry.

1.5 *Forced convection* means a mode of conventional oven operation in which a fan is used to circulate the heated air within the oven compartment during cooking.

1.6 *Freestanding* means the product is not supported by surrounding cabinetry, walls, or other similar structures.

1.7 *IEC 62301 First Edition* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (First Edition 2005–06) (incorporated by reference; see § 430.3).

1.8 *IEC 62301 Second Edition* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01) (incorporated by reference; see § 430.3).

1.9 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.10 *Normal nonoperating temperature* means the temperature of all areas of an appliance to be tested are within 5 °F (2.8 °C) of the temperature that the identical areas of the same basic model of the appliance would attain if it remained in the test room for 24 hours while not operating with all oven doors closed and with any gas pilot lights on and adjusted in accordance with manufacturer's instructions.

1.11 *Off mode* means a mode in which the product is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.12 *Primary energy consumption* means either the electrical energy consumption of a conventional electric oven or the gas energy consumption of a conventional gas oven.

1.13 *Secondary energy consumption* means any electrical energy consumption of a conventional gas oven.

1.14 *Standard cubic foot (L) of gas* means that quantity of gas that occupies 1 cubic foot (L) when saturated with water vapor at a temperature of 60 °F (15.6 °C) and a pressure of 30 inches of mercury (101.6 kPa) (density of mercury equals 13.595 grams per cubic centimeter).

1.15 *Standby mode* means any modes where the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) to facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.16 *Thermocouple* means a device consisting of two dissimilar metals which are joined together and, with their associated wires, are used to measure temperature by means of electromotive force.

1.17 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

A—Number of Hours in a Year
B—Number of Hours Pilot Light Contributes to Cooking
C—Specific Heat
E—Energy Consumed
Eff—Cooking Efficiency
H—Heating Value of Gas
K—Conversion for Watt-hours to Kilowatt-hours
K_e—3.412 Btu/Wh, Conversion for Watt-hours to Btus
M—Mass
n—Number of Units
O—Annual Useful Cooking Energy Output
P—Power
Q—Gas Flow Rate
R—Energy Factor, Ratio of Useful Cooking Energy Output to Total Energy Input
S—Number of Self-Cleaning Operations per Year
T—Temperature
t—Time
V—Volume of Gas Consumed
W—Weight of Test Block

2. Test Conditions

2.1 *Installation.* A free standing kitchen range shall be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above and on either side of the appliance. There shall be no side walls. A drop-in, built-in, or wall-mounted appliance shall be installed in an enclosure in accordance with the manufacturer's instructions. These appliances are to be completely assembled with all handles, knobs, guards, and the like mounted in place. Any electric resistance heaters, gas burners, baking racks, and baffles shall be in place in accordance with the manufacturer's instructions; however, broiler pans are to be removed from the oven's baking compartment.

2.1.1 *Conventional electric ranges, ovens, and cooking tops.* These products shall be connected to an electrical supply circuit with voltage as specified in section 2.2.1 with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.1.2 *Conventional gas ranges, ovens, and cooking tops.* These products shall be connected to a gas supply line with a gas meter installed between the supply line and the appliance being tested, according to manufacturer's specifications. The gas meter shall be as described in section 2.9.2. Conventional gas ranges, ovens, and cooking tops with electrical ignition devices or other electrical components shall be connected to an electrical supply circuit of nameplate voltage with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1. The microwave oven shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3). A watt meter shall be installed in the circuit and shall be as described in section 2.9.1.3.

* * * * *

2.2.1.2 *Supply voltage waveform.* For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.4 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3).

* * * * *

2.5.2 *Standby mode and off mode ambient temperature.* For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (Second Edition) (incorporated by reference;

see § 430.3). For microwave oven standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3).

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in section 1.10 of this Appendix, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4, as applicable.

* * * * *

2.9.1.3 *Standby mode and off mode watt meter.* The watt meter used to measure conventional range, conventional cooking top, and conventional oven standby mode and off mode shall have a resolution as specified in Section 4, Paragraph 4.4 of IEC 62301 (Second Edition) (incorporated by reference, see § 430.3). The watt meter used to measure microwave oven standby mode and off mode shall have a resolution as specified in Section 4, Paragraph 4.5 of IEC 62301 (First Edition) (incorporated by reference, see § 430.3), and shall also be able to record a ''true'' average power as specified in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition).

* * * * *

3. Test Methods and Measurements

* * * * *

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in section 2, *Test Conditions,* of this Appendix, and adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in section 1.10 and described in section 2.6. Set the conventional oven test block W_1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for at least one complete thermostat ''cut-off/cut-on'' of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in Section 2, *Test Conditions,* of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in section 1.10 and described in section 2.6. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

* * * * *

3.1.1.3 *Conventional oven standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in Section 2, *Test Conditions,* of this Appendix. For conventional ovens that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in 3.1.1.3.1 through 3.1.1.3.3. For units in which power varies as a function of displayed time in standby mode, either: (1) set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the tests (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.1.3.1 If the conventional oven has an inactive mode, as defined in section 1.9, measure and record the average inactive mode power of the conventional oven, P_{IA}, in watts.

3.1.1.3.2 If the conventional oven has an off mode, as defined in section 1.11, measure and record the average off mode power of the conventional oven, P_{OM}, in watts.

3.1.1.3.3 If the conventional oven has a cycle finished mode, as defined in section 1.3, measure and record the average cycle finished mode power of the conventional oven, P_{CF}, in watts.

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in section 2, *Test Conditions,* of this Appendix. Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer's instructions and turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in section 1.10 and described in section 2.6. Set the test block in the center of the surface unit under test. The small test block, W_2, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3, shall be used on electric surface units over 7 inches (178 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25±5 percent of the maximum energy input rate. After 15±0.1 minutes at the reduced energy setting, turn off the surface unit under test.

* * * * *

3.1.2.2 *Conventional cooking top standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For conventional cooktops that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional cooktop to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.2.2.1 and 3.1.2.2.2 of this Appendix. For units in which power varies as a function of displayed time in standby mode, either: (1) Set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.2.2.1 If the conventional cooking top has an inactive mode, as defined in section 1.9, measure and record the average inactive mode power of the conventional cooking top, P_{IA}, in watts.

3.1.2.2.2 If the conventional cooking top has an off mode, as defined in section 1.11, measure and record the average off mode power of the conventional cooking top, P_{OM}, in watts.

3.1.3 *Conventional range standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For conventional ranges that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second

Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional range to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.3.1 through 3.1.3.3 of this Appendix. For units in which power varies as a function of displayed time in standby mode, either: (1) Set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.3.1 If the conventional range has an inactive mode, as defined in section 1.9, measure and record the average inactive mode power of the conventional range, P_{IA}, in watts.

3.1.3.2 If the conventional range has an off mode, as defined in section 1.11, measure and record the average off mode power of the conventional range, P_{OM}, in watts.

3.1.3.3 If the conventional range has a cycle finished mode, as defined in section 1.3, measure and record the average cycle finished mode power of the conventional range, P_{CF}, in watts.

3.1.4 *Microwave oven.*

3.1.4.1 *Microwave oven test standby mode and off mode power.* Establish the testing conditions set forth in section 2, *Test Conditions,* of this Appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition). For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 and use the average power approach described in Section 5, Paragraph 5.3.2(a), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33. If a microwave oven is capable of operation in either standby mode or off mode, as defined in sections 1.15 or 1.11, respectively, or both, test the microwave oven in each mode in which it can operate.

* * * * *

3.2.1 *Conventional oven test energy consumption.* If the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed, E_O, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last ''ON'' period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next ''ON'' period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that ''ON'' period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following ''ON'' period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven, measure in watt-hours (kJ) any electrical energy, E_{IO}, consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O.

3.2.1.1 *Conventional oven average test energy consumption.* If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last ''ON'' period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next ''ON'' period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that ''ON'' period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following ''ON'' period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure in watt-hours (kJ) any electrical energy consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O using the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.2.1.2 *Energy consumption of self-cleaning operation.* Measure the energy consumption, E_S, in watt-hours (kJ) of electricity or the volume of gas consumption, V_S, in standard cubic feet (L) during the self-cleaning test set forth in section 3.1.1.1 of this Appendix. For a gas oven, also measure in watt-hours (kJ) any electrical energy, E_{IS}, consumed by ignition devices or other electrical components required during the self-cleaning test.

* * * * *

3.2.1.4 *Standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.1.3 of this Appendix. If the conventional oven is capable of operating in inactive mode, measure the average inactive mode power of the conventional oven, P_{IA}, in watts as specified in section 3.1.1.3.1 of this Appendix. If the conventional oven is capable of operating in off mode, measure the average off mode power of the conventional oven, P_{OM}, in watts as specified in section 3.1.1.3.2 of this Appendix. If the conventional oven is capable of operating in cycle finished mode, measure the average cycle finished mode power of the conventional oven, P_{CF}, in watts as specified in section 3.1.1.3.3 of this Appendix.

3.2.2 *Conventional surface unit test energy consumption.*

3.2.2.1 *Conventional surface unit average test energy consumption.* For the surface unit under test, measure the energy consumption, E_{CT}, in watt-hours (kJ) of electricity or the volume of gas consumption, V_{CT}, in standard cubic feet (L) of gas and the test block temperature, T_{CT}, at the end of the 15 minute (reduced input setting) test interval for the test specified in section 3.1.2 of this Appendix and the total time, t_{CT}, in hours, that the unit is under test. Measure any electrical energy, E_{IC}, consumed by an ignition device of a gas heating element or other electrical components required for the operation of the conventional gas cooktop in watt-hours (kJ).

3.2.2.2 *Conventional surface unit standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.2.2 of this Appendix. If the conventional surface unit is capable of operating in inactive mode, as defined in section 1.9 of this Appendix, measure the average inactive mode power of the conventional surface unit, P_{IA}, in watts as specified in section 3.1.2.2.1 of this Appendix. If the conventional surface unit is capable of operating in off mode, as defined in section 1.11 of this Appendix, measure the average off mode power of the conventional surface unit, P_{OM}, in watts as specified in section 3.1.2.2.2 of this Appendix.

* * * * *

3.2.3 *Conventional range standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.3 of this Appendix. If the conventional range is capable of operating in inactive mode, as

defined in section 1.9 of this Appendix, measure the average inactive mode power of the conventional range, P_{IA}, in watts as specified in section 3.1.3.1 of this Appendix. If the conventional range is capable of operating in off mode, as defined in section 1.11 of this Appendix, measure the average off mode power of the conventional range, P_{OM}, in watts as specified in section 3.1.3.2 of this Appendix. If the conventional range is capable of operating in cycle finished mode, as defined in section 1.3 of this Appendix, measure the average cycle finished mode power of the conventional range, P_{CF}, in watts as specified in section 3.1.3.3 of this Appendix.

3.2.4 *Microwave oven test standby mode and off mode power.* Make measurements as specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, as defined in section 1.15 of this Appendix, measure the average standby mode power of the microwave oven, P_{SB}, in watts as specified in section 3.1.4.1. If the microwave oven is capable of operating in off mode, as defined in section 1.11 of this Appendix, measure the average off mode power of the microwave oven, P_{OM}, as specified in section 3.1.4.1.

* * * * *

3.3.8 For conventional ovens, record the conventional oven standby mode and off mode test measurements P_{IA}, P_{OM}, and P_{CF}, if applicable. For conventional cooktops, record the conventional cooktop standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable. For conventional ranges, record the conventional range standby mode and off mode test measurements P_{IA}, P_{OM}, and P_{CF}, if applicable.

* * * * *

3.3.13 Record the average standby mode power, P_{SB}, for the microwave oven standby mode, as determined in section 3.2.4 for a microwave oven capable of operating in standby mode. Record the average off mode power, P_{OM}, for the microwave oven off mode power test, as determined in section 3.2.4 for a microwave oven capable of operating in off mode.

4. Calculation of Derived Results From Test Measurements

* * * * *

4.1.1 *Test energy consumption.* For a conventional oven with a thermostat which operates by cycling on and off, calculate the test energy consumption, E_O, expressed in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens, and defined as:

$$E_O = E_{AB} + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}} \right) \times \left(E_{CD} - E_{AB} \right) \right]$$

for electric ovens, and,

$$E_O = \left(V_{AB} \times H \right) + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}} \right) \times \left(V_{CD} - V_{AB} \right) \times H \right]$$

for gas ovens,

Where:

H = either H_n or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3 of this Appendix, expressed in Btus per standard cubic foot (kJ/L).

T_O = 234 °F (130 °C) plus the initial test block temperature.

and,

$$E_{AB} = \frac{\left(E_A + E_B \right)}{2}, \; E_{CD} = \frac{\left(E_C + E_D \right)}{2},$$

$$V_{AB} = \frac{\left(V_A + V_B \right)}{2}, \; V_{CD} = \frac{\left(V_C + V_D \right)}{2},$$

$$T_{AB} = \frac{\left(T_A + T_B \right)}{2}, \; T_{CD} = \frac{\left(T_C + T_D \right)}{2},$$

Where:

T_A = block temperature in °F (°C) at the end of the last ''ON'' period of the conventional oven before the test block reaches T_O.

T_B = block temperature in °F (°C) at the beginning of the ''ON'' period following the measurement of T_A.

T_C = block temperature in °F (°C) at the end of the ''ON'' period which starts with T_B.

T_D = block temperature in °F (°C) at the beginning of the ''ON'' period which follows the measurement of T_C.

E_A = electric energy consumed in Wh (kJ) at the end of the last ''ON'' period before the test block reaches T_O.

E_B = electric energy consumed in Wh (kJ) at the beginning of the ''ON'' period following the measurement of T_A.

E_C = electric energy consumed in Wh (kJ) at the end of the ''ON'' period which starts with T_B.

E_D = electric energy consumed in Wh (kJ) at the beginning of the ''ON'' period which follows the measurement of T_C.
V_A = volume of gas consumed in standard cubic feet (L) at the end of the last ''ON'' period before the test block reaches T_O.
V_B = volume of gas consumed in standard cubic feet (L) at the beginning of the ''ON'' period following the measurement of T_A.
V_C = volume of gas consumed in standard cubic feet (L) at the end of the ''ON'' period which starts with T_B.
V_D = volume of gas consumed in standard cubic feet (L) at the beginning of the ''ON'' period which follows the measurement of T_C.

4.1.1.1 *Average test energy consumption.* If the conventional oven can be operated with or without forced convection, determine the average test energy consumption, E_O and $E_{IO,}$ in watt-hours (kJ) for electric ovens and Btus (kJ) for gas ovens using the following equations:

$$E_O = \frac{(E_O)_1 + (E_O)_2}{2}$$

$$E_{IO} = \frac{(E_{IO})_1 + (E_{IO})_2}{2}$$

Where:

$(E_O)_1$ = test energy consumption using the forced convection mode in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens as measured in section 3.2.1.1 of this Appendix.
$(E_O)_2$ = test energy consumption without using the forced convection mode in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens as measured in section 3.2.1.1 of this Appendix.
$(E_{IO})_1$ = electrical energy consumption in watt-hours (kJ) of a gas oven in forced convection mode as measured in section 3.2.1.1 of this Appendix.
$(E_{IO})_2$ = electrical energy consumption in watt-hours (kJ) of a gas oven without using the forced convection mode as measured in section 3.2.1.1 of this Appendix.

* * * * *

4.1.2.3.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for conventional oven self-cleaning operations, $E_{SC,}$ expressed in kilowatt-hours (kJ) per year for electric ovens and in Btus (kJ) for gas ovens, and defined as:

$E_{SC} = E_S \times S_e \times K$, for electric ovens,

Where:

E_S = energy consumption in watt-hours, as measured in section 3.2.1.2 of this Appendix.
S_e = 4, average number of times a self-cleaning operation of a conventional electric oven is used per year.
K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

or

$E_{SC} = V_S \times H \times S_g$, for gas ovens,

Where:

V_S = gas consumption in standard cubic feet (L), as measured in section 3.2.1.2 of this Appendix.
H = H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.2 and 2.2.2.3 of this Appendix in Btus per standard cubic foot (kJ/L).
S_g = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

* * * * *

4.1.2.4 *Annual standby mode and off mode energy consumption of a single conventional oven.* Calculate the annual standby mode and off mode energy consumption for conventional ovens, $E_{OTSO,}$ expressed in kilowatt-hours (kJ) per year and defined as:

$E_{OTSO} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM}) + (P_{CF} \times S_{CF})] \times K$

Where:

P_{IA} = conventional oven inactive mode power, in watts, as measured in section 3.1.1.3.1 of this Appendix.
P_{OM} = conventional oven off mode power, in watts, as measured in section 3.1.1.3.2 of this Appendix.
P_{CF} = conventional oven cycle finished mode power, in watts, as measured in section 3.1.1.3.3 of this Appendix.

If the conventional oven has cycle finished mode, S_{TOT} equals 8,522.1 hours:

Where:

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional oven does not have cycle finished mode, S_{TOT} equals 8,540.1 hours;

If the conventional oven has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

If the conventional oven has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT} and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional oven has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OM} is equal to S_{TOT};

S_{CF} = 18, conventional oven cycle finished mode annual hours;
K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

* * * * *

4.1.2.5.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption of a conventional electric oven, $E_{AO,}$ expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AO} = E_{CO} + E_{SC}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.
E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.3.1 of this Appendix.

4.1.2.5.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual electrical energy consumption of a conventional electric oven, $IE_{AO,}$ expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AO} = E_{CO} + E_{SC} + E_{OTSO}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.
E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.3.1 of this Appendix.
E_{OTSO} = annual standby mode and off mode energy consumption as determined in section 4.1.2.4 of this Appendix.

4.1.2.5.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption of a conventional gas oven, $E_{AOG,}$ expressed in Btus (kJ) per year and defined as:

$E_{AOG} = E_{CO} + E_{SC} + E_{PO}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this Appendix.
E_{PO} = annual pilot light energy consumption as determined in section 4.1.2.2 of this Appendix.
E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.3.1 of this Appendix.

If the conventional gas oven uses electrical energy, calculate the total annual electrical energy consumption, E_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AOE} = E_{SO} + E_{SS}$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this Appendix.
E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.3.2 of this Appendix.

If the conventional gas oven uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AOE} = E_{SO} + E_{SS} + E_{OTSO}$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this Appendix.
E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.3.2 of this Appendix.
E_{OTSO} = annual standby mode and off mode energy consumption as determined in section 4.1.2.4 of this Appendix.

* * * * *

4.1.2.6.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption, $E_{TO,}$ in kilowatt-hours (kJ) per year and defined as:

$E_{TO} = E_{ACO} + E_{ASC}$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}(E_{CO})_i,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.3.1 of this Appendix.

4.1.2.6.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual energy consumption, IE_{TO}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TO} = E_{ACO} + E_{ASC} + E_{OTSO}$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.3.1 of this Appendix.

E_{OTSO} = annual standby mode and off mode energy consumption for the cooking appliance as determined in section 4.1.2.4 of this Appendix.

4.1.2.6.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption, E_{TOG}, in Btus (kJ) per year and defined as:

$E_{TOG} = E_{ACO} + E_{ASC} + E_{TPO}$,

Where:

E_{ACO} = average annual primary energy consumption for cooking in Btus (kJ) per year and is calculated as:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

Where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this Appendix.

and,

E_{ASC} = average annual self-cleaning energy consumption in Btus (kJ) per year and is calculated as:

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.3.1 of this Appendix.

$$E_{TPO} = \sum_{i=1}^{n}\left(E_{PO}\right)_i ,$$

total energy consumption of any pilot lights,

Where:

E_{PO} = annual energy consumption of any continuously-burning pilot lights determined according to section 4.1.2.2 of this Appendix.

n = number of pilot lights in the basic model.

If the oven also uses electrical energy, calculate the total annual electrical energy consumption, E_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$E_{TOE} = E_{ASO} + E_{AAS}$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this Appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.3.2 of this Appendix.

If the oven also uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TOE} = E_{ASO} + E_{AAS} + E_{OTSO}$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this Appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.3.2 of this Appendix.

E_{OTSO} = annual standby mode and off mode energy consumption as determined in section 4.1.2.4 of this Appendix.

* * * * *

4.1.4 *Conventional oven energy factor and integrated energy factor.*

4.1.4.1 *Conventional oven energy factor.* Calculate the energy factor, or the ratio of useful cooking energy output to the total energy input, R_O, using the following equations:

$$R_O = \frac{O_O}{E_{AO}}$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

E_{AO} = total annual energy consumption for electric ovens as determined in section 4.1.2.5.1 of this Appendix.

For gas ovens:

$$R_O = \frac{O_O}{E_{AOG} + \left(E_{AOE} \times K_e\right)}$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.5.3 of this Appendix.

E_{AOE} = total annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.5.3 of this Appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btus.

4.1.4.2 *Conventional oven integrated energy factor.* Calculate the integrated energy factor, or the ratio of useful cooking energy output to the total integrated energy input, IR_O, using the following equations:

$$IR_O = \frac{O_O}{IE_{AO}}$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

IE_{AO} = total integrated annual energy consumption for electric ovens as determined in section 4.1.2.5.2 of this Appendix.

For gas ovens:

$$IR_O = \frac{O_O}{E_{AOG} + \left(E_{AOE} \times K_e\right)}$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.5.3 of this Appendix.

IE_{AOE} = total integrated annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.5.3 of this Appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btus.

* * * * *

4.2.1.1 *Electric surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the electric surface unit under test, defined as:

$$Eff_{SU} = W \times C_P \times \left(\frac{T_{SU}}{K_e \times E_{CT}}\right)$$

Where:

W = measured weight of test block, W_2 or W_3, expressed in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.96 kJ/kg ÷ °C), specific heat of test block.

T_{SU} = temperature rise of the test block: final test block temperature, T_{CT}, as determined in section 3.2.2 of this Appendix, minus the initial test block temperature, T_I, expressed in °F (°C) as determined in section 2.7.5 of this Appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

E_{CT} = measured energy consumption, as determined according to section 3.2.2 of this Appendix, expressed in watt-hours (kJ).

* * * * *

4.2.2.1 *Conventional electric cooking top.*

4.2.2.1.1 *Annual energy consumption of a conventional electric cooking top.* Calculate the annual electrical energy consumption of an electric cooking top, E_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$E_{CA} = \frac{O_{CT}}{Eff_{CT}}$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this Appendix.

4.2.2.1.2 *Integrated annual energy consumption of a conventional electric cooking top.* Calculate the total integrated annual electrical energy consumption of an electric cooking top, IE_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$IE_{CA} = \frac{O_{CT}}{Eff_{CT}} + E_{CTSO}$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this Appendix.

$E_{CTSO} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$

Where:

P_{IA} = conventional cooktop inactive mode power, in watts, as measured in section 3.1.2.2.1 of this Appendix.

P_{OM} = conventional cooktop off mode power, in watts, as measured in section 3.1.2.2.2 of this Appendix.

If the conventional cooktop has both inactive mode and off mode annual hours, S_{IA} and S_{OM} both equal 4273.4;

If the conventional cooktop has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional cooktop has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

* * * * *

4.2.2.2.3 *Total annual energy consumption of a conventional gas cooking top.* Calculate the total annual gas energy consumption of a conventional gas cooking top, E_{CA}, in Btus (kJ) per year, defined as:

$E_{CA} = E_{CC} + E_{PC}$,

Where:

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this Appendix.

E_{PC} = annual energy consumption of the pilot lights as determined in section 4.2.2.2.2 of this Appendix.

4.2.2.2.4 *Total integrated annual energy consumption of a conventional gas cooking top.* Calculate the total integrated annual energy consumption of a conventional gas cooking top, IE_{CA}, in Btus (kJ) per year, defined as:

$IE_{CA} = E_{CC} + E_{PC} + E_{CTSO}$,

Where:

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this Appendix.

E_{PC} = annual energy consumption of the pilot lights as determined in section 4.2.2.2.2 of this Appendix.

$E_{CTSO} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$

Where:

P_{IA} = conventional cooktop inactive mode power, in watts, as measured in section 3.1.2.2.1 of this Appendix.

P_{OM} = conventional cooktop off mode power, in watts, as measured in section 3.1.2.2.2 of this Appendix.

If the conventional cooktop has both inactive mode and off mode annual hours, S_{IA} and S_{OM} both equal 4273.4;

If the conventional cooktop has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional cooktop has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.2.3 *Conventional cooking top energy factor and integrated energy factor.*

4.2.3.1 *Conventional cooking top energy factor.* Calculate the energy factor or ratio of useful cooking energy output for cooking to the total energy input, R_{CT}, as follows:

For an electric cooking top, the energy factor is the same as the cooking efficiency as determined according to section 4.2.1.3 of this Appendix.

For gas cooking tops,

$$R_{CT} = \frac{O_{CT}}{E_{CA}}$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

E_{CA} = total annual energy consumption of cooking top determined according to section 4.2.2.2.3 of this Appendix.

4.2.3.2. *Conventional cooking top integrated energy factor.* Calculate the integrated energy factor or ratio of useful cooking energy output for cooking to the total integrated energy input, IR_{CT}, as follows:

For electric cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}}$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total annual integrated energy consumption of cooking top determined according to section 4.2.2.1.2 of this Appendix.

For gas cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}}$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total integrated annual energy consumption of cooking top determined according to section 4.2.2.2.4 of this Appendix.

4.3 *Combined components.* The annual energy consumption of a kitchen range (*e.g.,* a cooktop and oven combined) shall be the sum of the annual energy consumption of each of its components. The integrated annual energy consumption of a kitchen range shall be the sum of the annual energy consumption of each of its components plus the conventional range integrated annual standby mode and off mode energy consumption, E_{RTSO}, defined as:

$E_{RTSO} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM}) + (P_{CF} \times S_{CF})] \times K$

Where:

P_{IA} = conventional range inactive mode power, in watts, as measured in section 3.1.3.1 of this Appendix.

P_{OM} = conventional range off mode power, in watts, as measured in section 3.1.3.2 of this Appendix.

P_{CF} = conventional range cycle finished mode power, in watts, as measured in section 3.1.3.3 of this Appendix.

If the conventional range has cycle finished mode, S_{TOT}, equals 8,311.2 hours;

Where:

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional range does not have cycle finished mode, S_{TOT}, equals 8,329.2 hours;

If the conventional range has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

If the conventional range has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional range has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to S_{TOT};

S_{CF} = 18, conventional range cycle finished mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

The annual energy consumption for other combinations of ovens and cooktops will also be treated as the sum of the annual energy consumption of each of its components. The energy factor of a combined component is the sum of the annual useful cooking energy output of each component divided by the sum of the total annual energy consumption of each component. The integrated energy factor of other combinations of ovens and cooktops is the sum of the annual useful cooking energy output of each component divided by the sum of the total integrated annual energy consumption of each component.

6. Appendix X to subpart B of part 430 is revised to read as follows:

Appendix X to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 3.2, 3.2.1 through 3.2.4, 4.2, 4.2.1 through 4.2.4, 5.1, and 5.2 of this Appendix X) need not be performed to determine compliance with energy conservation standards for dehumidifiers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after (*date 180 days after date of publication of the test procedure final rule in the* ***Federal Register***) must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1. Scope

This Appendix covers the test requirements used to measure the energy performance of dehumidifiers.

2. Definitions

a. *Active mode* means a mode in which a dehumidifier is connected to a mains power source, has been activated, and is performing the main functions of removing moisture from air by drawing moist air over a refrigerated coil using a fan, or circulating air through activation of the fan without activation of the refrigeration system.

b. *Bucket full/removed mode* means a standby mode in which the dehumidifier has automatically powered off its main function by detecting when the water bucket is full or has been removed.

c. *Energy factor for dehumidifiers* means a measure of energy efficiency of a dehumidifier calculated by dividing the water removed from the air by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

d. *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01) (incorporated by reference; see § 430.3).

e. *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

f. *Off mode* means a mode in which the dehumidifier is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the dehumidifier is in the off position is included within the classification of an off mode.

g. *Off-cycle mode* means a standby mode in which the dehumidifier:

(1) Has cycled off its main function by humidistat or humidity sensor;

(2) Does not have its fan or blower operating; and

(3) Will reactivate the main function according to the humidistat or humidity sensor signal.

h. *Product capacity for dehumidifiers* means a measure of the ability of the dehumidifier to remove moisture from its surrounding atmosphere, measured in pints collected per 24 hours of continuous operation.

i. *Standby mode* means any modes where the dehumidifier is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(2) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

3. Test Apparatus and General Instructions

3.1 *Active mode.* The test apparatus and instructions for testing dehumidifiers shall conform to the requirements specified in Section 1, ''Definitions,'' Section 2, ''Qualifying Products,'' and Section 4, ''Test Criteria,'' of the EPA's ''ENERGY STAR Program Requirements for Dehumidifiers,'' effective January 1, 2001 (incorporated by reference, see § 430.3). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final minimum energy factor value to two decimal places as follows:

(i) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places; or

(ii) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

3.2 *Standby mode and off mode.*

3.2.1 *Installation requirements.* For the standby mode and off mode testing, the dehumidifier shall be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference, see § 430.3), disregarding the provisions regarding

batteries and the determination, classification, and testing of relevant modes.

3.2.2 *Electrical energy supply.*

3.2.2.1 *Electrical supply.* For the standby mode and off mode testing, maintain the electrical supply voltage indicated in Section 4, ''Test Criteria,'' of the EPA's ''ENERGY STAR Program Requirements for Dehumidifiers,'' effective January 1, 2001, (incorporated by reference, see § 430.3) and the electrical supply frequency indicated in Section 4, ''Test Criteria,'' of the EPA's ''ENERGY STAR Program Requirements for Dehumidifiers,'' ± 1 percent.

3.2.2.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301, (incorporated by reference; see § 430.3).

3.2.3 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference, see § 430.3).

3.2.4 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

4. Test Measurement

4.1 *Active mode.* Measure the energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh) and product capacity in pints per day (pints/day), in accordance with the test requirements specified in Section 4, ''Test Criteria,'' of EPA's ''ENERGY STAR Program Requirements for Dehumidifiers,'' effective January 1, 2001 (incorporated by reference, see § 430.3).

4.2 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this Appendix. For dehumidifiers that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301, (incorporated by reference; see § 430.3), allow sufficient time for the dehumidifier to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.2.1 through 4.2.4 of this Appendix.

4.2.1 If the dehumidifier has an inactive mode, as defined in section 2(e) of this Appendix, measure and record the average inactive mode power of the dehumidifier, P_{IA}, in watts.

4.2.2 If the dehumidifier has an off-cycle mode, as defined in section 2(g) of this Appendix, measure and record the average off-cycle mode power of the dehumidifier, P_{OC}, in watts.

4.2.3 If the dehumidifier has a bucket full/removed mode, as defined in section 2(b) of this Appendix, measure and record the average bucket full/removed mode power of the dehumidifier, P_{BFR}, in watts.

4.2.4 If the dehumidifier has an off mode, as defined in section 2(f) of this Appendix, measure and record the average off mode power, P_{OM}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Standby mode and off mode annual energy consumption.* Calculate the standby mode and off mode annual energy consumption for dehumidifiers, E_{TSO}, expressed in kilowatt-hours per year, according to the following:

$$E_{TSO} = [(P_{IA} \times S_{IA}) + (P_{OC} \times S_{OC}) + (P_{BFR} \times S_{BFR}) + (P_{OM} \times S_{OM})] \times K$$

Where:

P_{IA} = dehumidifier inactive mode power, in watts, as measured in section 4.2.1 of this Appendix.

P_{OC} = dehumidifier off-cycle mode power, in watts, as measured in section 4.2.2 of this Appendix.

P_{BFR} = dehumidifier bucket full/removed mode power, in watts, as measured in section 4.2.3 of this Appendix.

P_{OM} = dehumidifier off mode power, in watts, as measured in section 4.2.4 of this Appendix.

If the dehumidifier has an inactive mode and off-cycle mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/2$; the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/2$; and the off mode annual hours, S_{OM}, is equal to 0;

S_{TOT} equals the total number of inactive mode, off-cycle mode, and off mode hours per year, defined as:

If the dehumidifier has bucket full/removed mode, S_{TOT} equals 3,024 hours;

If the dehumidifier does not have bucket full/removed mode, S_{TOT} equals 3,681 hours;

If the dehumidifier has an inactive mode and off mode but no off-cycle mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/2$; the off mode annual hours, S_{OM}, is equal to $S_{TOT}/2$; and the off-cycle mode annual hours, S_{OC}, is equal to 0;

If the dehumidifier has an inactive mode but no off-cycle mode or off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off-cycle mode annual hours, S_{OC}, and the off mode annual hours, S_{OM}, are each equal to 0;

If the dehumidifier has an off-cycle mode and off mode but no inactive mode, the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/2$; the off mode annual hours, S_{OM}, is equal to $S_{TOT}/2$; and the inactive mode annual hours, S_{IA}, is equal to 0;

If the dehumidifier has an off-cycle mode but no off mode or inactive mode, the off-cycle mode annual hours, S_{OC}, is equal to S_{TOT}, and the off mode annual hours, S_{OM}, and the inactive mode annual hours, S_{IA}, are each equal to 0;

If the dehumidifier has an off mode but no inactive mode or off-cycle mode, the off mode annual hours, S_{OM}, is equal to S_{TOT}, and the inactive mode annual hours, S_{IA}, and the off-cycle mode annual hours, S_{OC}, are both equal to 0;

If the dehumidifier has an inactive mode, off-cycle mode, and off mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/3$; the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/3$; and the off mode annual hours, S_{OM}, is equal to $S_{TOT}/3$;

S_{BFR} = 657, dehumidifier bucket full/removed mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

5.2 *Integrated energy factor.* Calculate the integrated energy factor, IEF, expressed in liters per kilowatt-hour, rounded to two decimal places, according to the following:

$$IEF = L_W/(E_{active} + ((E_{TSO} \times 24)/S_{active}))$$

Where:

L_W = water removed from the air during dehumidifier energy factor test, in liters, as measured in section 4.1 of this Appendix.

E_{active} = dehumidifier energy factor test energy consumption, in kilowatt-hours, as measured in section 4.1 of this Appendix.

E_{TSO} = standby mode and off mode annual energy consumption, in kilowatt-hours per year, as calculated in section 5.1 of this Appendix.

24 = hours per day.

S_{active} = 1,095, dehumidifier active mode annual hours.

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FEDERAL REGISTER

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Part III

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8712 of September 15, 2011

National Hispanic Heritage Month, 2011

By the President of the United States of America

A Proclamation

From those who trace their roots to America's earliest days to those who recently came to the United States carrying nothing but hope for a better life, Hispanics have always been integral to our national story. As an American family more than 300 million strong, we constitute one people, sharing sacrifice and prosperity because we know we rise and fall together. America is a richer and more vibrant country because of the contributions of Hispanics, and during National Hispanic Heritage Month, we celebrate the immeasurable impact they have made on our Nation.

Hispanics have had a profound and positive influence on our country through their strong commitment to family, faith, hard work, and service. They have enhanced and shaped our national character with centuries-old traditions that reflect the multiethnic and multicultural customs of their community. They are doctors and lawyers, activists and educators, entrepreneurs and public servants, and brave service members who defend our way of life at home and abroad.

My Administration is dedicated to ensuring America remains a land of opportunity for all. Our economic strength depends on the success of Hispanic families across our country, and I am determined to put workers of all backgrounds back on the job to rebuild and modernize America, while helping small businesses grow and creating pathways to employment. We are also engaging the Hispanic community in public service, improving educational opportunities, and expanding access to affordable, quality health care. And we remain committed to fixing our broken immigration system so it can meet America's 21st century economic and security needs.

The future of America is inextricably linked to the future of our Hispanic community. Our country thrives on the diversity and ingenuity of all our people, and our ability to out-innovate, out-educate, and out-build the rest of the world will depend greatly on the success of Hispanics. This month, as we honor their struggles and successes, let us recommit to ensuring our Nation remains a place big enough and bold enough to accommodate the dreams and prosperity of all our people.

To honor the achievements of Hispanics in America, the Congress by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 15 through October 15, 2011, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs under this year's theme, ''Renewing the American Dream.''

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

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Presidential Documents

Proclamation 8713 of September 15, 2011

National POW/MIA Recognition Day, 2011

By the President of the United States of America

A Proclamation

In every conflict in which our Nation has been involved, selfless American service members have sacrificed their lives for the sake of our country and its principles. Too many have never come home, or have endured unthinkable hardship as prisoners of war. On this day, we echo the creed inscribed on the black and white banners that fly in honor of America's Prisoners of War and Missing in Action, and we renew our promise to our heroes, that ''You Are Not Forgotten.''

We will never give up the search for those who are held as prisoners of war or have gone missing under our country's flag. We honor their sacrifice, and we must care for their families and pursue the fullest possible accounting for all missing members of our Armed Forces. Together, we must serve our Nation's patriots as well as they have served us—by supporting them when they come home, and by carrying on the legacy of those who do not. This is a promise we keep for our fallen, for our veterans past and present, and for all those whose loved ones have not returned from the battlefield.

On September 16, 2011, the stark black and white banner symbolizing America's Missing in Action and Prisoners of War will be flown over the White House, the United States Capitol, the Departments of State, Defense, and Veterans Affairs, the Selective Service System Headquarters, the World War II Memorial, the Korean War Veterans Memorial, the Vietnam Veterans Memorial, United States post offices, national cemeteries, and other locations across our country. We raise this flag as a solemn reminder of our obligation to always remember the sacrifices made to defend our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 16, 2011, as National POW/MIA Recognition Day, and I urge all Americans to observe this day of honor and remembrance with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

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H.R. 1249/P.L. 112–29
Leahy-Smith America Invents Act (Sept. 16, 2011; 125 Stat. 284)

H.R. 2887/P.L. 112–30
Surface and Air Transportation Programs Extension Act of 2011 (Sept. 16, 2011; 125 Stat. 342)

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